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JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

VOLUME IX

CONTAINING

October 1901 to July 1902

*59082 /
26/12/03*

TORONTO:

MONETARY TIMES PRINTING COMPANY, LIMITED



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THE JOURNAL is published quarterly on or about the first day of the months of October, January, April and July, and is sent without charge to Associates. Bank officers may become Associates on payment of an annual fee of \$1.00.

Anyone not eligible for Associate membership may subscribe for the JOURNAL at \$1.00 per annum. Single copies are not for sale, but Associates and subscribers may obtain additional copies of any issue on payment of 25c. each.

Fees and subscriptions should for the present be remitted to the address of the JOURNAL, as given below.

Changes of address should be promptly advised.

Contributions are invited upon subjects directly or indirectly connected with banking, or dealing with any phase of the economic development of Canada. To the authors of accepted contributions the Committee are in a position to award moderate honoraria.

Communications for the JOURNAL should be addressed as follows:

The Editing Committee,
Journal of the Canadian Bankers' Association,
Toronto.

The JOURNAL is the organ of the Canadian Bankers' Association and is subject to the control of the Council for the time being, but neither the Association nor the Council should be regarded as responsible for the opinions expressed.

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JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

OCTOBER—1901

THE HISTORY OF CANADIAN CURRENCY, BANKING AND EXCHANGE

VII. FURTHER EXPANSION AND CRISIS*

IN Lower Canada the speculative commercial element being confined very largely to the cities of Quebec and Montreal, there was not that wide-spread demand for banking establishments which characterized the United States and Upper Canada.

*Chief sources :

- Journals of the Special Council, Lower Canada.
Ordinances of the Governor-General and Special Council, Lower Canada.
Journals of the Assembly, Upper Canada.
Statutes of Upper Canada.
British Blue Books relating to Canada, 1837-39.
History, Principles and Prospects of the Bank of British North America, and of the Colonial Bank; with an Enquiry into Colonial Exchanges, etc. By Geo. R. Young, London, 1838
An Historical and Descriptive Account of British America, etc. By Hugh Murray, 3 vols., Edin., 1839.
Theory and Practice of Banking. By H. D. Macleod, 2 vols., Lond., 1866.
A Practical Treatise on Banking. By J. W. Gilbart, 2 vols., Lond., 1849.
Hunt's Merchants' Magazine, Vol. I., New York, 1839
A History of Banking in the United States. By Wm. Graham Sumner, New York, 1896
The Quebec Gazette, 1833-38.
The Montreal Gazette, 1837.
The Patriot and Farmers' Monitor, York, U.C., 1833-36.
The Constitution, Toronto, 1837.

In the latter this had led to the establishment of several private banks, and the granting of numerous public charters by the Legislature, albeit a tyrannous Home Government prevented the charters from going into operation. One or two attempts, however, were made to increase the banking institutions of Lower Canada, though only one resulted in a permanent establishment.

The Banque du Peuple owed its existence to political rather than to commercial enterprise. The political antagonism between the two races in Lower Canada, which had been steadily developing since the introduction of the Constitutional Act in 1791, had reached an acute stage in the thirties. The racial cleavage was extending from the purely political to the economic, social and professional relations of the people. As the existing banks were almost entirely in the hands of the English element, the common prejudice naturally extended to them. Consequently an effort was made, and with success, to organize a bank which would appeal to the national sentiment of the French Canadians.

The project was first heard of in 1833, when an item, copied from the *Daily Advertiser*, a Lower Canadian paper, appeared in the *Quebec Gazette* of August 12th, stating that arrangements were being made for the immediate establishment of a new bank, *en commandite*, with a capital of £75,000. The bank was to go into operation as soon as £12,000 had been paid in. The French system of a company, *en commandite*, was simply a form of joint stock company. Its special feature was that while the directors, or active partners named in the articles of association, were subject to unlimited liability, the ordinary shareholders were liable to the extent of their subscribed stock only.

Nothing was at first expressly stated with reference to the political affinities of the institution, but it was represented that this new principle of extended responsibility on the part of the directors would have the effect of enlisting the confidence of the French Canadians, who had but little faith in the paper of the existing banks.

The bank did not go into operation at the time, but in 1835 the scheme was fairly well matured, and had, indeed, several projected imitators. The articles of association of the new bank, as issued in printed form, were dated 12th Jan., 1835. There were

thirty-six articles, from which we learn that the bank was to be established in Montreal on the principle of *en commandite*, the named partners to be not less than seven or more than fifteen, and the partnership to continue for nine years. Branches might be established both within and without the Province. Directors were to be chosen by the majority of the shareholders, shares to consist of £12 10s each, the total capital to be not less than £100,000, but might be raised to £250,000. An instalment of ten per cent. was to be paid on subscribing, but shareholders might at any time pay into the bank any amount on their stock, and share in the profits in proportion. The bank must not hold real property beyond what comes to it in the way of security, and only so long as may be necessary to dispose of it. The articles of partnership might be modified or dissolved.

The leading promoters of this new bank were two prominent French Canadians, Messrs. Viger and Dewitt, and the enterprise, as it took shape, was known as the banking establishment of Messrs. Viger, Dewitt & Co. By the middle of April the directors had secured an office near that of the City Bank on St. Francis street.

The bank would no doubt have sought to secure a charter, but, considering the auspices under which it was started and its political affinities, there was no chance of its charter passing the Legislative Council. Yet, without a charter, if it attempted to issue notes of a lower denomination than four dollars, it would find itself in conflict with the currency act of 1830, which prohibited, in the case of banks not incorporated by law, the circulation of notes for smaller sums than one pound currency. The movements of the new banking house were therefore watched with considerable interest.

The second instalment on the stock was called for July 10th, and the bank began business shortly after the middle of the month, under the name of the Banque du Peuple, with Mr. Letourneaux as cashier, and Mr. Peltier as teller. The paper of the new bank was soon in circulation. It was then discovered that, in order to evade the law, its paper, though appearing in the shape of ordinary bank notes, really consisted of drafts on Viger, Dewitt & Co., payable on demand and endorsed by G. Peltier, the teller. The wording of these drafts was as follows, in both

French and English: "Banque du Peuple, Lower Canada. On demand pay to the order of G. Peltier one dollar, value received. Montreal, 11 Juillet, 1835, E. R. Fabre. A Messrs. Viger, Dewitt & Cie., Montreal." These bills were signed across the face in red ink, Viger, Dewitt & Co., and endorsed G. Peltier. The device was ingenious, and though its legality was doubtful, yet no effort seems to have been made to test the matter in the courts.

The bank was immediately attacked by the English party, on political grounds, and its credit assailed. Yet its paper passed into circulation and was maintained there by the policy of the chartered banks, which at first refused to accept it on any terms, and thus prevented its being returned upon the bank for redemption. However, like the Bank of Upper Canada, its English rivals soon recognized their mistake, and afterwards freely accepted the paper of the new bank.

The current attitude of the English party towards the institution is fairly represented by an editorial in the *Quebec Gazette* of August 7th, 1835. It is objected that the whole of its note issue depends upon a legal quibble, while the bank itself is the outcome of the fevered appeals of Papineau not to do business with the British element. Its affairs are not made public, nor are they subject to legal supervision as in the case of the other banks. While the others are restricted as to the range of their business, this institution is unlimited. Yet the French Canadians, and Mr. Dewitt in particular, were always clamouring to have the chartered banks more severely restricted, and their affairs more completely exposed to the public. The French Canadians may be entitled to banks of their own, but they should come under the same terms as the others. However, the bank prospered, the French Canadians supported it on national grounds, and it even came to be a mark of patriotism, in many quarters, to refuse to take Montreal and Quebec bank notes. However much the English and French factions and their papers quarrelled over the merits and success of their respective banks, even to the extent of giving each other the lie direct, the banks themselves seem to have lived quite peaceably together; much more so, indeed, than the chartered and joint-stock banks of Upper Canada. When the crisis arrived, we find the Banque du Peuple

associated with the other Lower Canadian banks in the various measures which were adopted to weather the storm.

At the same time that the articles of association of the Banque du Peuple were published, there appeared the articles of association of another bank to be established at Chambly. Of this institution the Hon. Mr. Debartzch was the leading promoter. It also was to be established on the *en commandite* principle, but was to be a mortgage bank, with a view to assisting the agricultural interests. The mortgages were to be deposited with the bank and the notes to be issued on their security. But, to facilitate this, the mortgages were again to be pledged to raise £25,000 in cash, in the United States, upon which it was expected that notes to the extent of £75,000 could be issued. There were other subtle features in the scheme, by which, apparently, the bank and its clients were to grow rich at each other's expense ; but the project came to naught.

In this connection may be mentioned a couple of rather ingenious institutions in Upper Canada, actuated by the same benevolent purpose of assisting the farmers by lending money on the security of their lands. The idea was first advocated in Upper Canada by some one in Cobourg, in the early part of 1834. When the Cobourg bank could not obtain a charter, it was suggested by this gentleman that the people should take the matter into their own hands and establish a bank for themselves, for the special accommodation of the agricultural interests. Loans were to be made on the security of the land, and the paper of the institution was to consist of post-notes payable twelve months after date. Thus would be avoided the necessity of keeping specie on hand out of season.

In the course of the following year this scheme took definite shape ; and in April, 1835, we have an account of the institution as it was about to go into operation at Cobourg. It was to be known as the Newcastle District Accommodation Company. The company was to consist of 250 shareholders, each having one share upon which two pounds were to be advanced, making a capital of £500. Though the capital was small, the credit of the partners, the confidence of the public and the notes of the company, payable twelve months after date, were expected to insure success. The company would undertake to furnish the farmers

with capital, in the shape of post-notes, with which to cultivate their farms. It might also undertake to dispose of their produce and return them the balance after deducting the amount of the advances made, with interest at six per cent. By a most ingenious automatic process, even the small capital of £500 would not be required in the actual business of the bank. Though the loans were really made for a year, yet they were to be broken up into two loans running six months each. At the end of the first six months the loans were to be returned in the shape of previous issues of the Bank and received again in the shape of new issues having another twelve months to run. By this simple device none of the paper of the bank would ever have an opportunity of remaining twelve months in circulation, and hence would never come back for redemption. Since the note issues would always just equal the principal of the loans, the interest would require to be paid in specie or the notes of the chartered banks.

It will be seen that among the beauties of this device was the fact that the onus of collecting and returning all the outstanding issues of the bank, before they became redeemable, was entirely thrown upon the customers, and the promoters of the institution escaped the necessity of explaining how it was to be done. The simplicity and efficiency of the scheme so commended itself, we are told, to over five hundred of the best ratepayers of the district that they subscribed to a declaration that, having listened to an exposition of the principles of the new institution, they give it their unqualified approval, and promise to receive its notes in payment for goods, produce, land, or anything they have to sell.

Whether this bank ever went into actual operation I have not been able to discover. The Act of 1837, however, would allow it but a short life. The following year we find an almost identical institution, even to the five hundred freeholders, organized in Kingston, called the Accommodation Bank of Upper Canada. As in the former case, the notes were to be loaned upon the security of real estate to the extent of half its value. The wording of the notes, taken from an unsigned one for four dollars, was as follows: "The Accommodation Bank, Upper Canada, will pay the bearer twenty shillings, twelve months after date, in specie or current bank notes, for value received. King-

ston,—18—,” with blanks for the signatures of the president and cashier. On one end of the note was printed “Five hundred freeholders pledged to the support of this bank,” and on the other end, “Double the amount in real estate pledged for every bill issued from this bank.” Such were some of the means by which the latent wealth of the Canadas was to be developed.

The Banque du Peuple having apparently proved that independent banks could be established in Lower Canada, others immediately sought to profit by this important discovery. In April, 1836, a bank in Boucherville had issued notes of the same nature as those of the Banque du Peuple. The officers of this bank were reported to be a notary public and a couple of inn-keepers.

About the same time the announcement was made that “Several citizens, both rich and respectable proprietors,” were about to start a bank at St. Hyacinthe. This bank it appears also went into operation, for its notes were reported to be in circulation.

Even the English element profited by the French discovery, for another bank, known as the Commercial Bank of Montreal, was started by Messrs. J. E. Mills & Co. They seem to have been men of considerable means following the example of Messrs. Viger, Dewitt & Co. When the crisis culminated, and the other banks of Lower Canada suspended, they withdrew their notes from circulation and we hear no more of this bank. In connection with the actual crisis we shall have to refer to several obviously fraudulent banks which were connected with various Canadian points.

One other important and rather unique banking institution doing business in Canada dates from this same crowded period of banking experiment. This is the Bank of British North America.

References have already been made to various schemes for the establishing of banking houses in Canada by British capitalists. Interest in such projects waxed and waned with the changing economic circumstances of the country, never quite dying out nor ever quite issuing in a practical measure, until we come to the Bank of British North America.

In July, 1833, Mr. Dalton, the editor of the *York Patriot*, who had always a very special interest in questions of currency and banking, assured the readers of his journal that some of the greatest capitalists of London, among them the Rothschilds and the Barings, had resolved on establishing a bank in Upper Canada. He was assured that it was the Scotch system of banking that would be introduced. The project is next heard of through Montreal, where, in a letter from London in December of the same year, it is learned that several gentlemen of that city had been contemplating the founding of a bank in Upper Canada, and were still of that mind; but they were likely to be forestalled by Messrs. Baring Brothers & Co., who have been for some time actually making arrangements for the purpose. About the same date the *Patriot* once more assured its readers that the Barings and Rothschilds had finally decided to establish a bank in Canada, with a capital of two millions sterling. The Scotch method is still favoured, and the editor, who was an ardent believer in that system, expresses his conviction that within five years of its establishment there will be no other kind of banking in operation on this continent. There was, no doubt, some foundation for these confident assurances. The Barings were largely interested in American exchange and finance, and had desired for some time to obtain a foothold in Canada, which they afterwards secured by undertaking to dispose of Canadian securities in the British market. But, at the time in question, apparently the rising tide of speculation in Britain itself, affording, for the years 1834-35, an insatiable and profitable market for British capital, prevented these projects from coming to any practical issue.

However, the idea was by no means abandoned, and when the speculative fever passed from Britain to America, we hear simultaneously, in the beginning of 1836, of a scheme for a British American colonial bank being developed by some directors of the Irish Provincial Bank, and of a similar project taking shape in London. The plans of the former, known as the Colonial Bank, contemplated an establishment with £600,000 capital in shares of £50 each, £3,000 being reserved for subscription in the colonies, with branches to be opened only where solicited by residents engaged in business. The other was the Bank of British North America, with a capital of £1,000,000 in shares of £50

each, and including shareholders in Great Britain, Ireland and the colonies. Both institutions came into existence, but divided the American colonial field between them. The Colonial Bank confined itself mainly to the West Indies, but with agencies at St. John and Halifax, while the Bank of British North America took in the colonies indicated in its title, including Newfoundland.

Mr. R. M. Martin in his book on the "History Statistics and Geography of Upper and Lower Canada;" claims to have originated the idea of forming a bank in London for the whole of the North American colonies. He says he outlined a plan which he transferred to his friend Wm. Medley, of Lombard street, whose genius in banking appreciated the idea of identifying the money interests of Canada with Britain, and of taking advantage of the American exchanges through New York. Medley called a meeting at his office, laid the plan before the gentlemen assembled, and the Bank of British North America was the result. In it Mr. Martin professes to see "A better prospect of security for the allegiance of the North American colonies than in any legislative enactment."

In July, 1836, the bank obtained from the Imperial Parliament "An Act to enable the proprietors or shareholders of the company called the Bank of British North America, to sue and be sued in the name of any of the directors, or of the secretary for the time being of the said company." In the meantime preparations were being made in the colonies for introducing branches of the bank. Mr. Robert Carter, one of the directors of the bank, had been appointed a special commissioner from the Court of Directors in London to visit the North American colonies, collect information which might be of service to the directors at home, and explain to the business men of the chief colonial centres the nature and objects of the bank. Thus we find a statement in the *Quebec Gazette* of Aug. 19th, 1836, signed by Mr. Carter, announcing that the provisional committee for conducting the affairs of the Quebec branch of the bank consisted of Jas. Dean, J. M. Fraser, Pierre Pelletier, Geo. Pember-ton and Wm. Phillips. The shares for the district have been allotted, a deposit of £10 sterling has been paid on each, and arrangements are making for the starting of business as soon as possible.

In Kingston a public meeting of merchants and others was held, with Mr. J. Strange, vice-president of the Commercial Bank, in the chair, to consider a proposal to solicit a branch of the bank for that town. Various resolutions were passed setting forth the great possibilities of the province in general and of Kingston in particular, should capital be found to develop them. A committee was appointed to communicate with Mr. Carter with a view to securing a branch of the bank. A favourable response was received, but the Kingston branch was not established until the crisis was safely passed. In the course of the first year branches were opened at Quebec, Montreal, Toronto, St. John, Halifax and St. Johns, Newfoundland. The provisional committee at Montreal consisted of Wm. Cunningham, Austin Cuvillier, A. Furniss, Robt. Gillespie and Jas. Miller. The first regular board of Directors in Montreal consisted of A. Cuvillier, A. Furniss, J. Ferrier and Wm. Edmondstone, with Chas. Scott as manager. The local directors of the branch in Toronto were Hon. Geo. Crookshank, T. M. Jones, Geo. Monro and Jas. Newbigging, with B. Smith as manager.

Though there had been some opposition to the bank, when first proposed, especially among the moneyed interests of the maritime colonies, yet Mr. Cartier so adroitly managed his campaign that this was soon removed, and he secured, especially in Canada, the sympathy and, to a large extent, the active co-operation of the existing banks in the promotion of the new enterprise. What seemed especially to enlist the interest of the Canadian banks was the prospect of having an institution which, in virtue of its British and American connection, would be able and willing to supply the colonies with specie. The specie, once introduced, was certain before long to be shared by all the banks, an idea which was carefully fostered by the shrewd commissioner.

As explained by Mr. Carter, the new institution was a joint-stock bank, consisting of about six hundred partners in Britain and three hundred in the colonies. The shareholders were subject to unlimited liability. The British partners included most of the merchants interested in the trade of the North American colonies, as well as others engaged in the East and West Indian and other foreign trades, also several London and other bankers

and capitalists. The central management was entrusted to fourteen directors in London, while the management of the colonial branches was to be conducted by local boards of directors approved by the central court in London and assisted by a manager of each branch, who will probably be selected from one of the Scotch banks. For the sake of preserving uniformity in the system, a general inspector will superintend all the colonial branches. The capital of the company will consist of £1,000,000, three-fourths of which have been subscribed in Britain, and the remainder is to be distributed among the North American colonies. The directors have power to increase the capital whenever considered advisable. The profits of all the branches will be put into a common fund, from which uniform dividends will be paid, either in London, or at the chief branches at the current rate of exchange. The stock may be transferred either in the colonies or in London. The special virtues of the institution will be that in addition to the usual services of colonial banks, it will introduce the Scotch system of cash credit accounts. Under this system a party giving security to the bank can draw, up to the limit of his credit, according to the special needs of his business. He will be charged for the sum which he draws only so long as he employs it, and anything he pays in will be placed to his credit, the interest on so much of his loan ceasing. The bank will also allow a small rate of interest upon moneys deposited for a fixed period, thus giving something to people having money lying idle. From another source we learn that interest would be allowed only on deposits of not less than three months standing, and which could not be withdrawn without 75 days notice, interest to cease from the date of notice. According to Mr. Carter, the new bank would be particularly useful in transferring sums from one colony to another. Also the bank, instead of exporting specie, or drawing it from the other banks, will bring specie into the country, and its notes will be held as reserves by the other banks. The comforting expectations raised by this prospect were not very fully realized, as the new bank soon learned to be as careful of its specie as any of its native associates.

Though branches of the bank were opened in Quebec, Montreal and Toronto early in 1837, the crisis which followed arrested their progress at the very outset, and checked the issue of notes

The Imperial Act for facilitating the operations of the bank being valid only within the United Kingdom, the bank found it necessary to apply for special Acts from the various colonial Legislatures, authorizing the company to sue and be sued in the name of the manager or any of the local directors. An Act for this purpose was passed by the Legislature of Upper Canada March 4th, 1837. This Act also specified that the bank should make an annual return of its affairs, of the same nature as that required from the Bank of Upper Canada. No notes under five shillings were to be issued, or any notes not payable on demand. Should the bank fail at any time to redeem its notes in legal tender on demand, it must cease all banking operations until it resumes payment.

The political disturbances in Lower Canada prevented the bank from obtaining a similar Act there, before the suspension of representative government. But when the Special Council was established in 1838, the bank petitioned for an ordinance similar in tenor to the Act of the Imperial Parliament. It prayed, also, to be exempted from the restriction of 10 and 11 Geo. IV., c. 5., which prohibited the issue of any promissory notes of a lower denomination than five dollars, by any other than the chartered or incorporated banks of the Province. The bank wished to have the privilege of the chartered banks to issue down to the value of five shillings, or one dollar. Further, should any Act or ordinance be passed authorizing the suspension of specie payments by any of the other banks of the Province, it was requested that special provision should be made to include the branches of the Bank of British North America. The ordinance petitioned for was passed by the Special Council in 1838. It authorized the bank to issue notes down to five shillings, though those below one pound sterling were not to exceed one-fifth of the total amount of notes furnished to the respective branches. The usual statement of affairs furnished by the chartered banks was also required.

The Special Council had apparently forgotten the trouble which had been occasioned by including in the charter of the City Bank those clauses in the charter of the Bank of Montreal which appointed the death of a felon, without benefit of Clergy, for embezzlement and counterfeiting. These same clauses were accordingly introduced into the ordinance in favour of the Bank

of British North America. When it came before the Lords of the Treasury in England they objected so decidedly to the clauses affecting the criminal law of the country, and authorizing the issue of notes for less than one pound sterling, that they recommended the immediate disallowance of the ordinance. However, Lord Glenelg, having had rather a surfeit of colonial interference, simply recommended to Lord Durham to pass another ordinance repealing the first as far as these objectionable features were concerned, but he left the final decision to his own judgment. Apparently Lord Durham thought it unnecessary to interfere with an ordinance which was likely to have but a short life, for no new ordinance was passed.

The first annual meeting of the Bank of British North America took place in London early in 1837. The formal report, presented by the secretary, referred to the general objects of the institution, and the excellent field presented by the colonies, where the high rate of interest and the fluctuations of the exchanges afforded an opportunity for the profitable employment of their capital. The link of Empire which the institution represented was not forgotten. Of the 5,000 shares reserved for the colonies 3,427 had been taken up and something paid upon them. Of the 15,000 shares subscribed in Britain, instalments had been paid on all but 1,182. Branches of the bank were in operation in Montreal, Quebec, Toronto and St. Johns, Newfoundland, and arrangements had been made for beginning business in Halifax and St. John, New Brunswick. The profits already derived from the employment of the deposits received by the Bank, had been more than sufficient to pay all the expenses of the company up to the present. Preparations were being made to extend branches to Kingston, Fredericton, Miramichi and Prince Edward Island, which would involve a further call upon the shareholders. After the formal report of the Secretary had been presented, Mr. Carter addressed the shareholders, giving them some of the information which he had acquired, as to the resources and prospects of the various colonies which he had visited. It appears that the chief opposition to the Bank, on the part of those already in the field, was found in Nova Scotia and New Brunswick. In the former colony the banking interests in the Council had been sufficient to defeat the bill in favour of the new bank,

which had passed the Assembly. In New Brunswick the Act had failed to pass the third reading in the Assembly, owing to the absence of some of their supporters. It was expected, however, that another session would remedy these defects in both colonies. This forecast turned out to be correct.

We have now to deal with the crisis of 1837-38 and its effects upon the Canadian banks. Except in the case of a few well-informed bankers and merchants, the crisis of 1837 was almost universally looked upon in Canada as something entirely emanating from the United States. Thence it came, like a pestilence, to plague the borders of a long-suffering and innocent people, whose only crime was that an untoward fate had lodged them in the vicinity of an unscrupulous and grasping nation of speculators. The glittering prosperity of their neighbours was a mysterious marvel to the patriotic Canadians, until the American bubble burst, their wealth vanished, their methods were exposed, and their future was ruined, permitting Canada to take its rightful place as the commercial leader of the continent. As a matter of fact, however, alike in legitimate prosperity, in reckless speculation and in consequent crisis and bankruptcy, the lead was taken by Britain.

In the period from 1833 to 1836 Britain enjoyed one of those great epochs of manufacturing and commercial expansion, which confirmed her in the undoubted leadership of the economic progress of the nineteenth century. Towards the close of that period the secondary consequences of prosperity and expansion were very evident. Immense amounts of capital, real and fictitious, were invested in railroad enterprises, in the establishing of numerous joint-stock banks, and in purchasing large quantities of foreign securities, particularly from the United States. To the United States, also, were being sold vast quantities of goods on easy terms, and which were only partially met by imports of raw materials, especially in food and cotton. Under the tropical heat of a British speculative fever, accompanied by fertilizing showers of British goods, British capital, and British emigrants, the great natural resources of the Middle States, from the lakes to the mouth of the Mississippi, vegetated into wealth, real and prospective, with a most surprising luxuriance. To represent and circulate these teeming riches, most of them as yet in the shape

of future land values, banks sprang up in every quarter, and, on the basis of a little specie borrowed from the east, which in turn had borrowed it from Britain, vast quantities of paper money were issued, under the conviction that thereby capital was being furnished to the people. Capital was indeed procured in the shape of goods purchased with the paper money. But the parties furnishing the capital did not regard themselves as investors content to receive interest only. They confidently expected that they were selling goods, for which they hoped to be paid, within a reasonable time, in such medium as would command more goods from abroad. This purpose the paper of local banks would obviously not serve, though it required some considerable time to demonstrate this in practice. The demonstration constituted the crisis as far as America was concerned.

That British goods, British capital, and British emigrants should flow to the United States in preference to British America, has always been something of a mystery to Canadians who have not followed closely the history of North America. We need not marvel, therefore, at the feelings of envy and jealousy which characterized the attitude and coloured the language of our loyal representatives of that day with reference to those enterprising hordes from Britain who, in conjunction with the sons of former British immigrants, were enthusiastically developing the virgin resources of the valley of the Mississippi and its eastern tributaries, and perversely extolling republican institutions. To gloat over the financial collapse of such a people may not have been charitable on the part of high-born Canadians, but it was very human and the provocation was severe.

In Britain the crisis was reached during 1836, and had it not been for the latent specie resources of the country and the action of the Bank of England, which came to the rescue of many of its weaker brethren, it would have been calamitous. Naturally the numerous advances to the United States in credits and capital were immediately called in, while the market for American staples, and especially cotton, was checked. When the merchants and bankers of the eastern States sought to protect themselves by calling upon their debtors further west, they found them in possession of a promising future, but with little more substantial to offer at the time than western mortgages and paper

money. A very large amount of specie was actually sent to Britain, but enough could not be obtained to meet all the obligations. The withdrawal of British advances having revealed the real nature of the American situation, the banks began to contract their business in an effort to protect themselves. The only institution which might have come to the rescue, the Bank of the United States, had been greatly weakened and partially discredited in its unsuccessful struggle with the Federal Government. Under the circumstances a crisis was inevitable. In the early part of 1837 the country was faced by two alternatives; either the people must push one another into general bankruptcy and confusion for lack of specie, or there must be an arresting of liquidation, which was most easily accomplished by a suspension of specie payments on the part of the banks. The latter course was adopted. It was undoubtedly an evil, but, under the circumstances, it was much the least of the evils which threatened the country. It made possible an easy and rapid recovery of business relations throughout the States when the crisis was over and Britain once more extended, though in more modest proportions, her credit and specie. In 1838 the Bank of England itself sent £1,000,000 to the United States to assist the banks in resuming specie payments.

For purposes of specie supply and exchange, the Canadian Provinces were related to the money markets of the East, and particularly that of New York, in much the same manner as the outlying States of the Union. There were, however, two elements of advantage on the Canadian side, in the event of a crisis. In the first place, the large expenditure in Canada on the part of the Imperial Government furnished a supply of specie or its equivalent, exchange on Britain, which was not available in the American States. On the other hand, economic progress and speculative discounting of the future had been on a much humbler scale in Canada, hence the reaction was not so severe. The craving for more banks and paper money, for land speculations and extensive credits, was quite as marked in the case of the Canadians, but hard necessity leaned to the side of virtue. Even as matters stood, Canadian indebtedness to the United States was considerable, giving the Americans a command on Canadian money which meant bank notes in the first instance and their specie in the second.

This brief outline may serve to render more intelligible the action of the Canadian banks during the crisis, and the peculiar convictions of the Canadian people with reference to the part played by the United States in the crisis.

When the first news of the general financial distress in the United States reached Lower Canada, the banks sought to protect themselves as best they could. Discounting was immediately checked, much to the inconvenience of sound business houses and the complete undoing of the more purely speculative concerns. The policy to be adopted by the New York banks was naturally looked for with the greatest interest. In Upper Canada, owing to the personal views of Governor Head, and in opposition to the wishes of the leading banks and their customers, an independent line was followed for a time, but in Lower Canada the banks followed the American lead very closely.

Professor Dunbar says, in his *History of American Banking*, "If the utterances of bank conventions, bank commissioners, legislative committees, etc., in the different States are read side by side, they are found to contain almost identical expressions to the effect that the public of 'our' State is to be congratulated on the soundness of the banks in it, while the general suffering is attributed to the folly and errors of neighbours; that our banks have plenty of specie for themselves, but they cannot be expected to provide all their neighbours with specie; that it is impossible for any to maintain specie payments unless all do." This very accurately expresses the attitude of the Canadian Provinces, alike towards their British brothers and their American cousins.

The New York banks suspended on May 10th, and immediately after the news was received in Montreal, a public meeting was called for May 16th, to take into consideration, "the present alarming condition of the money market, and to adopt measures to prevent the withdrawal of specie from the vaults of our banks and its exportation to a foreign country." The Hon. Geo. Moffatt was in the chair and briefly explained the nature of the situation. He pointed out that, owing to the very close connection between Montreal and the American business centres, any calamity which overtook the latter must be reflected in Montreal. The New York banks having suspended specie payments, the Canadian banks must do likewise. He was firmly convinced

that the banks in Montreal were quite able to redeem their notes, but to do so would mean a severe contraction and possible cessation of their accommodations to the merchants, which would prove ruinous to every interest in the country.

Some correspondence between a committee of the Board of Trade and the three banks in the city was then read. The general tenor of this was that the Bank of Montreal signified its willingness to co-operate with the other banks in a movement to "suspend specie payments under the conviction that the general interest of the public requires such a course, as the only alternative to prevent the immediate and rapid drain of specie for exportation." The City Bank agreed to follow this lead, and the directors of the Banque du Peuple, while declaring their institution capable of meeting all its engagements, yet will not stand out against the public interest, but will be happy to accede to the wishes of the public at large. The meeting then passed unanimously a series of resolutions in which they deplored the circumstances which had led to such disastrous results in the United States. Though they fortunately had none of those evils in Canada, yet, owing to their relations with the United States, their interests must suffer unless they protect themselves. Moreover, they have positive information that individuals are now hastening from New York and elsewhere to this Province for the purpose of withdrawing specie from the vaults of the banks and no time is to be lost in frustrating their designs. The only measure that will give adequate protection is the suspension of specie payments by the banks. They have the utmost confidence in the solvency and stability of their own banks to redeem their notes, but this can be done only at the expense of the merchants. Under these circumstances the meeting recommends the banks of the Province, and especially of the city of Montreal, to suspend specie payments and exercise forbearance to one another and the merchants generally.

The Quebec merchants adopted the same course and passed similar resolutions. The banks accepted the advice tendered them by their friends, claiming to be acting in the public interest and therefore asking for the confidence and support of the public.

The three Montreal banks undertook to receive each others notes in payment and on deposit, as before the suspension.

The action of the banks was very favourably received among the merchants, but, inasmuch as there had been considerable over-trading and inflation, it was impossible that the banks should be able to sustain the business of the country at anything like its former level by means of their customary discounts while they declined to redeem their paper in specie. The notes of the banks fell considerably in value, even Bank of Montreal notes being at a discount of ten per cent. within a month after suspension. Nevertheless, to have adopted any other course would undoubtedly have led to widespread bankruptcy.

At the same time there was little sound judgment behind the common cry that had the banks maintained specie payments they would have been ruined by outsiders drawing off their specie by illegitimate methods. This cry had already been raised by the banks in Upper Canada against one another, and now against both the United States and Lower Canadian banks, but especially the latter. What it meant was simply that those having legitimate claims against the merchants and banks in the Canadas, would be likely to press them when they were in special need of specie. But had exchange been available there would have been no foreign demand for specie, a fact recognized at the time by a few who really understood the situation. Yet it was just here that the whole difficulty lay, alike between Canada and the United States, between the Western and Eastern States, and between the Eastern States and Britain.

By suspending specie payments they left themselves with a circulating medium for domestic purposes, and put a check upon the export of specie measured by the premium on foreign exchange. At the same time this policy permitted what specie there was to be used almost exclusively in international trade, much to the profit of the banks. The suspension made possible a gradual instead of a sudden contraction in the volume of credit. Yet, having once suspended, the banks were subject to a strong inducement both from immediate self-interest and from the importunity of borrowers to keep their discounts in a more inflated condition than the reduced state of legitimate business required.

Within a week after the suspension, specie was at a premium of six per cent. on dollars and three per cent. on French

crowns. The premium on exchange to Britain steadily rose in sympathy with the rate at New York. There it reached the highest point, twenty-one per cent., in the beginning of September, while in Montreal it ranged from 1 to 2 per cent. higher. It has to be remembered that at this time the actual value of the sovereign in American dollars was \$4.86, which, however, in the language of exchange, represented a premium of $9\frac{1}{2}$ per cent. Exchange quoted at $9\frac{1}{2}$ per cent. premium was therefore really at par.

In addition to the difficulties connected with foreign exchange was that involved in the payment of Customs dues and other obligations to the Government, which had previously been received in bank notes. The Committee of Trade presented a memorial to the Governor-in-Chief, setting forth the impossibility of obtaining specie for the payment of duties, etc., and praying that bank notes or other paper might be received instead. In reply the Governor agreed to sanction payment in bank notes, provided the banks would conform to certain conditions. The collectors of customs might take from those making entry, security for the payment of duties in specie on or before the 20th of September next, but, in addition, each party should furnish a receipt from the Montreal or Quebec Bank, to the effect that he has the necessary amount on deposit there, and which sum will be payable to the Crown in specie on or before the 20th of September next. Further, the banks must undertake that the balance of specie now returned as being in their vaults will not be diminished to any considerable extent in the interval. But should the balance of specie increase to any extent, the Government may demand payment as it sees fit.

The bank, however, promptly declined to fulfill these conditions, and the merchants were compelled to obtain their specie by paying the market premium for it.

On the whole, during the crisis, and apart from the political disturbances which accompanied it, the business of Lower Canada cannot be said to have suffered more severely than was inevitable through the subsidence of an inflated and speculative trade. The suspended bank notes were freely accepted in all domestic exchanges, yet the banks did not take advantage of suspension to push their notes unduly. Though the merchants had

to make certain sacrifices to obtain foreign exchange, or pay customs dues, yet these they were able to share with the public. Neither the merchants nor the public, however, were required to make a tithe of the sacrifices that would have been forced upon them had business been paralyzed by a sudden and severe contraction in the circulating medium, such as threatened Upper Canada.

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GILBART LECTURES, 1901*

No. II

BY SIR JOHN PAGET, BART., BARRISTER-AT-LAW

CROSSED CHEQUES; THE TRUE OWNER

In all cases like *The Great Western Railway Company v. The London and County Bank*, and, indeed, in many others, there is a character and a phrase continually occurring, viz., "the true owner." It is the true owner as well as his customer to whom the banker is liable, if he pays a crossed cheque contrary to the crossing, under sec. 79; it is the true owner to whom the banker is responsible when he has collected a cheque for a person having no title, or a defective title, unless he is protected under sec. 82. He is the standing danger to the banker, and we have often talked about him here. But I have never defined him to you. I rather assumed that he was a less complex character than I now fancy he is. Let me now deal with him as a naturalist would with a rare animal whose nature and habits he wished to accurately and fully describe.

To begin with, I should define him thus: "The true owner of a bill, note, or cheque is the person who has the property in, and immediate right to possession of the paper on which it is written." That may seem a meagre or a trivial definition, but I believe it is the only correct one. You may suggest that the true owner is the person who is entitled to enforce payment of the bill, note, or cheque. So he is, in many cases, but in others there is nobody liable to him. Take cases like the *William Brown* case, or the one we have just been talking about, *The Great Western Railway Company v. The London and County Bank*, there the drawer of the cheque was

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the true owner, and, of course, as drawer, had no rights on the cheque against anybody.

In extreme cases, indeed, what the true owner is owner of is not strictly a bill, note, or cheque at all, inasmuch as the instrument has never been completed by delivery. A cheque is stolen out of the drawer's desk, or is stolen in the post, where the post is the sender's, not the intended receiver's, agent. There is no delivery there; the document, though complete in form and on the face of it, is still wanting in that delivery which is an essential quality of a bill, note, or cheque, and which must exist, either in fact or by the conclusive presumption in favour of a holder in due course, before the document has any effect whatever as a bill. And the form of action adopted by the true owner against people who have dealt with the bill to his detriment, as, for instance, a banker who has collected the proceeds for a person wrongfully in possession of the bill, justifies my definition. For the form of action was, and is, that of conversion of the bill, a form of action only applicable to a mere chattel. It is true that the action frequently resolves itself into a claim for the money received by means of the bill or cheque; but that is the outcome of a legal doctrine of long standing, by which a plaintiff may waive the wrong done to him by the unauthorized dealing with his property, and adopt the alternative course of suing for the money realized by the wrongdoer as money had and received for the plaintiff's use. In *Bavins, Jr., and Sims v. The London and South-Western Bank*, you may remember that the main portion of the judgment of the Court of Appeal was devoted to this point. But, of course, there must be the wrong to waive. If conversion would not lie, there is nothing to waive, and no foundation for the claim for money had and received. So I think we may safely adopt my definition of the true owner as "the person who has the property in, and the "immediate right to possession of the paper on which the bill, "note, or cheque is written." Therefore, when a man claims against you for having collected a cheque or a bill for the wrong person, for having paid a cheque contrary to the crossing, or for wrongfully dealing with a cheque, or bill, or note in pretty nearly any way whatever, the first thing you have to do, apart altogether from the protection the Bills of Exchange Act may afford you,

is to see whether the man is in a position to attack you, whether he is the true owner, whether the property in and immediate right of possession of the paper on which the instrument is written is vested in him, whether it was so vested in him at the time you did the act or had the dealing with it of which he complains. If he cannot bring himself within these conditions he cannot touch you.

But though the property in, and right to possession of, the piece of paper is the test of the true owner, the title to the paper is subject to incidents and diversions foreign to the nature of a mere piece of paper. The reason is that the piece of paper, when once issued, embodies or expresses a contract. That contract is one of a particular nature, it is the sort of perambulating contract giving independent rights to persons not in touch with the original parties which is the essence of a negotiable instrument. And the law merchant and the Bills of Exchange Act have attached certain conditions, certain consequences, to the negotiable instruments known as bills, notes, and cheques. So the piece of paper, when it becomes a bill, note, or cheque, is a piece of paper and something more. Its corporeal part remains paper, and it is as paper that the true owner must establish his title to it, but by a sort of process of consubstantiation, it has an invisible, immaterial element introduced into it, that of contract and negotiability.

That contract and negotiability are dependent on and regulated by rules of law and statutes inapplicable to an ordinary chattel such as a piece of paper. And as the body is controlled through influences acting on the mind, so the piece of paper has to follow the lines and observe the conditions imposed upon its contractual constituent. It is something like a paper kite, which remains paper, but, by virtue of the control of its string, and the balance of its tail, assumes a different behaviour and direction from the piece of newspaper which blows along the street. Or it is like a court card in a pack of cards, with special qualities and incidents attaching to it by the rules of the game. Take an example, the question of forged endorsement. Treating a bill as a mere chattel, a piece of paper, endorsement has nothing to do with the passing the property in it; the handing over is sufficient, just as you may give a book to another man

without writing his name in it. But if the bill is an order bill, and the endorsement forged, the Bills of Exchange Act, sec. 24, steps in and prevents even the property in the paper passing, by enacting that no right to retain the bill can be acquired through or under that signature. So again with the *bonâ fide* holder for value. He can acquire rights in a bill and in the paper on which it is written which no one could acquire in a chattel, even by purchase in market overt. No order can be made on him to restore it to the person from whom it has been stolen, or from whom it has been obtained by false pretences, even after he has prosecuted the thief or the person guilty of the false pretences to conviction.

This, then, is the somewhat anomalous position: The true owner must have the property in, and right to possession of the piece of paper, but his rights are subject to, and regulated by, the law relating to negotiable instruments.

Now the true owner may be either the creative or the derivative owner. A man draws a cheque. The cheque-book is his, that particular cheque is his. Until he parts with it he is the true and absolute owner. Or a bill or cheque comes to a man in the regular course of negotiation with no forged endorsement anywhere, and no defect of title, or the defect of title is neutralized by his taking it as holder in due course. He is a derivative true owner, either because the piece of paper has come to him by such transfer as would give him the property in it if it were a horse, or because the law of negotiable instruments acting on its contracting part, and, carrying the physical part with it, has put him in the position of true owner. Here you have the two leading kinds of true owner.

But now, given your true owner, creative or derivative, how may he cease to be such, how may he part with the property? Of course, to take the simplest case first, by parting with the bill, note, or cheque, by issuing it if he be the creative owner, by negotiating it again if he be the derivative owner. Or, of course, if he be the derivative owner, and is paid in due course, he must give it up to the person who pays him.

But there are many other cases not so easily disposed of. The document may get out of the true owner's physical possession without the property or right of possession passing out of

him, leaving him still the true owner. Say the cheque is stolen out of the drawer of the person who drew it, it is obvious the thief can have no property in it or right to keep it. It is doubtful whether even a *bonâ fide* holder for value could acquire the property in it. The point was left unsettled in *Clutton v. Attenborough*, and *Bennett v. Baxendale* is not altogether conclusive on the point. If he could, it would be only by the conclusive presumption of delivery existing in his favour under sec. 21 of the Bills of Exchange Act, and I am by no means sure that section was meant to cover such extreme cases.

Or take the case which commonly arises, where a claim is made against the collecting banker. A man draws a cheque and posts it to a creditor in settlement of an account, and it is stolen in the post. Has the sender parted with the property in it? Has he ceased to be the true owner? Very probably he gives the creditor another cheque and sues the collecting banker, as was done in the *William Brown* case. Is he entitled to recover as true owner? It entirely depends on whether the posting of the cheque did or did not constitute delivery to the creditor. If the creditor had expressly requested a cheque by post, or if there were an established course of business between the parties that cheques should be so transmitted, the posting would be such delivery, the property in the cheque would pass on the posting, the drawer would no longer be the true owner, and would not be in a position to sue the collecting banker. If there was no such request and no established course of business, the question would be, I think, uncertain, in view of that difference of opinion between Lord Halsbury and Lord Herschel on the point to which I alluded at the very close of my lectures last year.

But now we come to a large class of cases which it is very difficult to deal with. I mean the cases where the true owner, be he creative or derivative, is induced to part with the document by fraud. It was that case of *Tate v. The Wilts and Dorset Bank* which first set me thinking over this. I told you, last year, I was still thinking over it, but it has only recently dawned on me what an exceedingly valuable case it is. For just see how misleading the wording of sec. 82 is: "Where a banker, "in good faith, and without negligence, receives payment for a "customer of a cheque crossed generally, or specially to himself,

“and the customer has no title or a defective title thereto, the “banker shall not incur any liability to the true owner of the “cheque by reason only of having received such payment.” One calls to mind sec. 29, which says, “the title of a person who “negotiates a bill is defective within the meaning of this Act “when he obtained the bill by fraud,” and one, not unnaturally, concludes that when the customer has obtained the bill by fraud, somebody else is true owner, and that the banker is liable unless he can get home under the protection afforded by sec. 82.

Such a conclusion, however, is not in all cases the correct one. Fraud is, as we know, infinite in its variety of forms, and I think it is quite clear that there may be, and are, conditions in which, though the bill, note, or cheque is obtained by fraud, the property nevertheless passes, if not absolutely, yet for a time, the person from whom the instrument is so obtained ceases for the time being to be the true owner; and that although, when he discovers the fraud, he may repudiate the transaction and resume his property in the instrument, he cannot do so to the detriment of any person who has altered his position in honest reliance on the document, believing it to be all right. I verily believe this protection is not confined to a *bonâ fide* holder for value. I believe it goes to the full extent I have mentioned, and would cover the case of a banker collecting for another person. If we can establish this view, it would mean that, in such cases, the banker would be protected, apart altogether from the conditions imposed by sec. 82. It would not be necessary that the person from whom the banker received the document should be a customer, and the protection would apply to dealings with bills not payable on demand, or promissory notes, just as much as to cheques. There has been a growing inclination, lately, to take up this point; I have often heard it discussed, especially with reference to that case of the *Great Western Railway Company v. The London and County Bank*, and I think it will well repay our consideration.

How, then, are we to discriminate between the class of fraud which prevents the property passing, and the class of fraud which does not prevent its passing, at any rate, temporarily? I think we shall find the true test to be that where the fraud is such that no contract at all arises, the property does not pass;

where there is a contract, although that contract be induced by fraud, and is voidable or revocable by the person defrauded, then the property does pass, though it reverts to the person defrauded on his repudiation of the transaction.

What class of fraud precludes the existence of a contract? In the first place, I think any such fraud as involves the utter absence of a contracting mind in the person defrauded, as makes it clear that he had no intention whatever of entering into any engagement of the nature of that he was beguiled into ostensibly entering into. The sort of fraud I mean, which was perpetrated in *Foster v. McKinnon*, where an old man of feeble sight was induced to sign his name on the back of a bill by the fraudulent statement that it was a guarantee which, in fact, he had undertaken to sign; or the sort of fraud practised in *Lewis v. Clay*, where the defendant was got to sign his name through holes in blotting paper by the statement that he was signing some documents connected with a marriage settlement, whereas, in fact, a promissory note was concealed beneath. If that sort of fraud were practised on a true owner, the property in the document would never pass out of him. The total absence of the contracting element would keep the property in the true owner, even as against a holder in due course. The next class of fraud which absolutely prevents the property passing is more subtle and difficult to deal with.

It is not here a question of the nature of the contract which the deceived person believes himself to be entering into, it is not like his being induced to sign a promissory note by being told it is a document relating to a marriage settlement, or a bill by being told it is a guarantee.

But there is another element in a contract besides the subject matter, viz., the parties. The individuality of the parties may be more or less important in different kinds of contracts, the individuality of the surgeon I employ to cut off my leg may be more important than that of the butcher I employ to supply me with meat; but this remains clear, that if I contract to deliver property to A, or if I make a contract which, if A were the other contracting party, would pass the property to A, that cannot have the effect of passing the property to B. And if B, by his artfulness, gets possession of goods under such a

contract, he acquires no property in them, nor can a purchaser from him acquire any, unless he purchase in market overt, and then that title would be defeated by conviction of the offender. *Lindsay v. Cundy*, decided by the House of Lords, in 1878, the case which is so often referred to in *Tate v. The Wilts and Dorset Bank* is the leading case on this point. Lindsays were linen manufacturers at Belfast. One Alfred Blenkarn hired a room on the top floor of a house at the corner of Wood Street, Cheapside. The entrance to the house was in Little Love Lane, but the room had two side windows looking into Wood Street. Addressing his letter from 37 Wood street, and exalting his room to the dignity of a warehouse, he wrote to Lindsays on the subject of a purchase of goods from them. The name signed to the letters was always signed without any Christian name or initial representing one, and was written so as to appear "Blenkiron & Co." There was a highly respectable firm of W. Blenkiron & Son, carrying on business in Wood street, but at No. 123, not 27. Lindsay & Co., who knew the respectability of Blenkiron & Son, though not the number of their premises, answered the letters and sent the goods, addressing them to "Messrs. Blenkiron & Co., 37 Wood street, Cheapside," addressing the invoices the same way. You will not be surprised to hear they were taken in at once. Blenkarn sold the goods, some of them to Messrs. Cundy, who were *bonâ fide* purchasers, though not under circumstances constituting a purchase in market overt.

Blenkarn was convicted and sentenced, and then Lindsays sued Cundys for conversion of the goods. Questions arose as to the re-vesting of the property on conviction of Blenkarn, but the judgment of the House proceeded on another basis. For they held that here no contract ever came into existence, that the property could only pass by contract, and, there being no contract, had never passed out of Lindsays in this case. Lindsays knew nothing of Blenkarn, they never thought of him and never intended to deal with him. Their minds never, for an instant of time, rested upon him, and as between him and them there was no consensus of mind which could lead to any agreement or any contract whatever. As between him and them there was merely the one side to a contract, when, in order to produce a contract, two sides would be required. The then

L. C., Lord Cairns, sums up this in words which were quoted in *Tate v. The Wilts and Dorset Bank*: "The answer, therefore, is this, that your Lordships have not to deal with one of those cases in which there is, *de facto*, a contract made which may afterwards be impeached and set aside on the ground of fraud; but you have to deal with a case which ranges itself under a completely different chapter of law, the case, namely, in which the contract never came into existence. That being so, it is idle to talk of the property passing. The property remained, as it originally had been, the property of Lindsay & Co., and the title which was attempted to be given to Cundy & Co., was a title which could not be given to them."

Now let us try to apply this doctrine to the case of the true owner of a cheque or bill. *Tate v. The Wilts and Dorset Bank*, assumes that such a case might arise. But we must bear in mind *Clutton v. Attenborough*, where a cheque was fraudulently obtained by plaintiffs' clerk from them, payable to one George Brett for supposed work done by him, the said George Brett being a fictitious person, and his work equally fictitious, and the House of Lords held that the defendants, who had taken the cheque *bonâ fide*, and for value, from the fraudulent clerk, and got the money on it, were entitled to keep it. It is narrow steering, but I think we can do it. There is a distinction, but a fine one. The analogous case to *Lindsay v. Cundy* would be where the true owner thought he was delivering the bill or cheque to A, when, in fact, he was delivering it to B, who was personating A, either directly or through some such medium as the post. Suppose Blenkarn knew that Blenkiron & Co. had supplied goods to Lindsays, and by a fraud similar to that by which he obtained the goods, had obtained possession of a cheque payable to Blenkiron or bearer, I do not believe the property would have passed to him, even subject to revocation. I think the difference comes in where the true owner thinks he is dealing with one definite person known to him, when, in fact, he is communicating and dealing with another person masquerading under that name or an imitation of it. In such case, as I say, I do not believe the property in the bill or cheque ever passes out of the true owner. I do not think even a *bonâ fide* holder for value could acquire a title in it. It is not a light or easy matter to cut

out the holder in due course ; but the true rule seems to be, no contract, no passing of property to anyone, and the judgment of the House of Lords seems to me to show clearly that the fraudulent substitution of a party is just as fatal to the existence of a contract as the fraudulent substitution of one document for another. In each case the contracting mind is equally absent, in each case an essential element of contract is lacking. So we may conclude that in this class of cases the true owner never parts with his rights, and that no dealings with the document are protected as against him, unless by force of some such statutory provision as sec. 82.

Now pass to the next class of frauds, those, namely, where there is a *de facto* contract, but a contract induced by fraud and revocable at the will of the defrauded person.

In these cases, where property is the subject of or involved in the contract, the property follows, so far as may be, the lines of the contract ; when the contract is repudiated or revoked the property re-vests in the true owner, subject to such rights as innocent third persons may have acquired therein in the interval between the making of the contract and the repudiation of it. That sort of resumable property is not unknown to the law. If a pheasant flies out of my covert on to your land and you shoot it, then it belongs to you, but if it flies back to my covert it belongs to me.

What, then, are the conditions in which this state of affairs arises ? What sort of fraud induces a man to make a contract and passes property, leaving the contract revocable and the property resumable if the rights of third parties have not intervened ? I think the broad answer is, any sort of fraud not falling within one of the two heads we have just been discussing ; any fraud which does not eliminate the contracting mind, any fraud which does not substitute one document for another, or one ascertained party for another ascertained party, any fraud which is the means of making the defrauded party enter into a contract, but does not misrepresent either the nature of that contract or the parties thereto. It is, as Lord Penzance suggested in *Cundy v. Lindsay*, the distinction between the case of the man, who, being deceived, enters into no contract, and the man, who, being also deceived, does enter into a contract. And of this

latter class of fraud, resulting in a *de facto*, but revocable contract, we have examples in *Clutton v. Attenborough*, and in *Tate v. The Wilts and Dorset Bank*. Here cheques were obtained by fraud, by misrepresentations, in the one case that a certain fictitious person had done certain fictitious work, in the other that one Laidman was in a position to supply certain scrap-iron, which he was not. And we have the suppositious case put by Lord Hatherley in *Cundy v. Lindsay*, in which he supposes Blenkarn, instead of adopting the course he did, as coming to Lindsays and falsely saying, "I am as rich as Blenk-iron & Co., I have transactions as large as that firm, I have a large balance at my banker's." I am sure you see and appreciate the difference for yourselves by this time. And in all these cases where the fraud is in the inducement, not the substance of the contract, the property, be it calico goods or the paper on which the bill or note is written, passes, at any rate, *pro tem*; the pheasant, to use my former illustration, flies over the true owner's boundary fence.

But now suppose the fraud is discovered, and the true owner repudiates the contract. What happens? *Primâ facie*, the property in the goods or in the instrument, as it passed out of the true owner by virtue of the contract, reverts to him on the annulling of that contract. If the goods or the bill be still in the hands of the fraudulent party, he can assert no right to keep them or it. The true owner becomes true owner again; indeed, I think, in such cases, he is to be regarded as having been true owner all through. But it is different where the rights of innocent third parties have intervened. I do not think we need pursue this point further with respect to goods, the acquisition of rights therein by innocent parties runs on different lines to those which regulate the rights of innocent parties in bills, notes, and cheques. These are negotiable instruments, and their character of negotiability gives the innocent party who has dealt with them the pull in many cases where he would not have it with regard to goods. So let us look at this question merely with regard to bills, notes, and cheques. What dealings with these instruments, pending repudiation of the contract, will disentitle the former true owner to resume his property in them, will prevent him adopting any of the remedies peculiar to the true

owner, preclude him from being, or asserting himself to be, the true owner at all?

First, the existence of a *bonâ fide* holder for value. Such an one has acquired absolute property and indefeasible rights in the document and the remedies thereon. He is the true owner, and you cannot have two independent true owners, and nothing and nobody can touch him. That is shown by *Clutton v. Attenborough*.

Next, there may be innocent parties, short of holders in due course, who have acquired rights in or with respect to the instrument or who, on the faith of it, have adopted a particular course of conduct, whose position would be unjustly prejudiced if, on repudiation of the contract, the defrauded party were to be put back in all respects in his original position, if his title, so to speak, related back, and he was entitled to treat himself as having been true owner throughout. That is one, at least, of the grounds of decision in *Tate v. The Wilts and Dorset Bank*. Channell, J., says, "I take it the bankers were the holders of the cheque (whether they were holders for value does not matter) and they got payment of it in the regular way. It is admitted that if that was so, then there was a fresh disposition of the cheque, and that thereupon the transaction could not be avoided, so as to make the bank liable." That gives us one class of rights which will hold good as against the true owner, the rights acquired by taking and dealing with the cheque as a holder, not necessarily a holder for value, Channell, J., is explicit on this point. It is not a question of a *bonâ fide* holder for value, but just the case of a person who has had the cheque innocently in his possession and innocently dealt with it before he has had any notice of the repudiation of the contract or the reversion of the property. "New disposition of the cheque," are the judge's words, and they are very comprehensive ones, including many dealings with the document other than ordinary negotiation, expressly covering, as seen in this case, the receiving by a banker of the money on a cheque, bill, or note. Channell, J., does not, in terms, state that it is necessary for the application of the rule, that the banker should have handed over the money, and, remembering the very strong line which has been taken, in some cases, as to the conclusiveness of payment on a negotiable instrument, it may well

be that the fact of having, as holder, received the money on the cheque or bill is sufficient to entitle the holder to keep it. Be that as it may, the principle anyhow applies where the banker has received the money and handed it over.

It is a perfectly fair and reasonable principle ; you have been dealing with the person who, for the time being, was the true owner, who had the property in, and the right to possession of, the bill, note, or cheque ; another person has the option of avoiding the contract and resuming the position of true owner, but that does not entitle him to nullify what has been done during the interval. Only, remember that this principle goes only to defence, it does not extend so as to enable an action to be brought on the instrument. A man is not entitled to say, " I took this " bill innocently, that was a fresh disposition of the bill, despite " the fact that I gave no value ; I am, therefore, entitled to recover " on it, notwithstanding it was obtained by fraud." The person from whom a bill has been obtained by any class of fraud may repudiate the contract, or set up the fraud against anyone who claims on the bill, unless he be a holder in due course. I deny the truth of the rule sometimes laid down that conversion will lie against anyone dealing with the bill who could not have sued on it.

There is one class of fraud relating to a bill which scarcely seems to fall within either of the categories I have described ; I mean the case where a bill is delivered for a particular purpose, say, to be discounted, and is applied to another. I do not think the property ever passes in such case, except to a *bonâ fide* holder for value. That is the view adopted by Pollock and Wright, in their treatise on " Possession in Law." There is no delivery with any intention of passing the property, there is no contract at all, the document is merely handed to an agent for a specific purpose, there is nothing for the defrauded person to disaffirm or repudiate. The delivery, being only for a specific purpose, falls short of that complete delivery essential to the character of a bill, note, or cheque, and save as regards the holder in due course, leaves the document in the condition of a chattel until and unless the delivery is completed by the application of the document to that particular purpose. I consider, therefore, that cases of this sort fall under the same rules as those where the

fraud is of such a nature that there is no contract and no divesting, even temporary, of the property.

One question more remains under this head. Suppose a cheque crossed "not negotiable" is obtained by such a fraud as results in a revocable contract. Does such crossing operate so as to prevent anybody acquiring any rights at all pending repudiation? Does it entitle the true owner, on repudiation, to treat himself as having been true owner all the time? Does it prevent the property passing at all, or, what comes to the same thing, make the owner's title, on repudiation, relate back to the time of the fraud? And, if so, does it cut out the rights, not only of a transferee, but of any person who has innocently dealt with the cheque? The Court of Appeal, in *Great Western Railway Company v. London and County Bank*, seem to have thought it had the fullest possible effect. The Master of the Rolls says that, under sec. 81, the person taking the cheque had no better title than Huggins, "which, after the disaffirmance of the transaction by the plaintiffs would be no title at all." Vaughan Williams, L.J., says he is inclined to think that the effect of the words "not negotiable" is to place the person taking the cheque bearing those words in exactly the same position as the person from whom he takes it, and he also says that, but for sec. 82, he saw no reason to doubt that the plaintiffs, as true owners of the cheque, would have an action for the money obtained by the presentation of the cheque, notwithstanding the fact that the cheque, when issued, was a voidable and not a void instrument. And he adds, "It would have been otherwise but for the statutory effect of the words 'not negotiable.'" I quite agree that this is the position of a transferee. If the transferor or any previous holder has a revocable title, that is the only title he can pass on, any subsequent holder gets only a revocable title, he takes the cheque with the risk of revocation attached to it, with, so to speak, its death wound in it, and so the revocation and the true owner's title relate back to the time of the fraud, as against all subsequent holders. And I think this would also cut out the theory of a new disposition of the cheque in such a case. In *Great Western Railway v. London and County Bank*, there had been at least as much a new disposition of the cheque as there was in Tate's case. The cheque in Tate's case was not

marked "not negotiable." You might say that that is not a case of title, that sec. 81 only aims at regular transferees, that its wording is not such as to counteract the rights which an innocent party might acquire by dealing, in the interval before revocation, with a party who, at that time, had a title, though a revocable one. But apparently it will not do; Vaughan Williams, L.J., having acquiesced in the view that the bank were acting as agents, his remarks must be taken as applying to them in that capacity, and, as we shall see hereafter, his statement that but for sec. 82 they would be liable for money had and received involves the proposition that they would have been liable for conversion. And, indeed, it would be somewhat inconsistent to give a person who has only dealt with the cheque by way of fresh disposition, greater rights and protection than a *bond fide* transferee for value.

DEBATE ON THE ROYAL MINT BILL

HOUSE OF COMMONS, 17 May, 1901

THE House went into committee to consider the following resolution:

“That it is expedient to enact that there shall be payable to His Majesty in every year out of the Consolidated Revenue Fund of Canada, a sum not exceeding in the whole in any one year the sum of seventy-five thousand dollars, for defraying the expenses connected with the maintenance of a branch of the Royal Mint in Canada.—Hon. Mr. FIELDING.

The MINISTER OF FINANCE (Hon. W. S. Fielding)—For some years the question of establishing a mint in Canada has from time to time engaged the attention of the House; and I think I may say with accuracy that, subject to some qualifications, the idea has found much favour. To a certain extent, this desire for a mint in Canada has been the outcome of what one may call a legitimate national pride. Our people see that Canada is a country growing rapidly in wealth, population and power, and therefore we are disposed to do here to-day many things which, a few years ago, we were content to have done abroad. No doubt that feeling has to a considerable extent influenced those who view with favour the establishment of a mint. The fact that Canada is a metal-producing country has added additional force to the argument, especially during the last few years, when there has been so large an increase in our gold output from the Yukon.

In this respect our Australian brethren are far ahead of us. As far back as 1853, one of the Australian colonies—the colony of New South Wales—established a mint. In 1869 the colony of Victoria followed suit, and within the last two or three years the small colony of Western Australia has also established a mint. Thus we find that in each of these colonies—all of which

united would not equal Canada—they have felt it desirable to have mints in operation, and there are actually now three established there.

To some extent the favourable view taken of the project is due to commercial reasons. There is an old and familiar phrase that trade follows a flag, but there are many who believe also that trade follows the gold, and that if the stream of gold, which has passed out of Canada into the American assay offices in the United States, could have been directed through Canada it would have had a very material effect on our trade and commerce, especially in the western country. There is something in that, undoubtedly, though perhaps our western friends are disposed to magnify it. There is in the United States, at Seattle, an assay office, and on the Pacific coast our American friends have also a mint at San Francisco.

It is held by our western friends that the existence of this institution upon the Pacific coast has had a very material effect in diverting trade from the Yukon, which under more favourable conditions might have been retained in Canada. I am not prepared to say that the argument is as strong as some of those who use it think, but I am inclined to think there is some considerable force in it. The town of Seattle, we are told, which a few years ago was a very small place, has been built up largely through the trade that has come from the Yukon country. It is hoped that, if a market can be found in Canada for the gold—first an assay office and then a mint—this business may be more largely controlled by Canadians. While sympathizing to a considerable extent with these views, I have felt it necessary in former discussions to point out that our conditions in Canada were somewhat peculiar, and differed materially from those of Australia in relation to the minting of gold. We in Canada are not large users of gold in any way of coin. Our currency system—and we all believe that it is a very excellent system—is largely a paper currency, though it rests upon a very strong foundation of gold, so strong as to make it impossible to raise any question as to its stability. But we do not use gold in the general trade of the country to any large extent. That is one reason why it was wise to hesitate before undertaking the responsibility of a mint. Another reason is—comparing our position with that of Australia

—that the currency of Australia corresponds exactly with the Imperial coinage, and the consequence is that the Australian mints are able not merely to make coins for Australian purposes but to make coins which circulate throughout the United Kingdom, and practically wherever the British flag flies. We, having a decimal currency, not corresponding with the coinage of the mother country, would not be placed on terms of equality with Australia so far as that is concerned. If we should determine to establish a purely Canadian mint confined to the manufacture of Canadian coins we could not expect to find a market for any large portion of the gold of Canada, certainly not for the greater part of it. Holding these views, I suggested in former discussions that, before we should accept the responsibility of establishing a mint in Canada we should do well to see if we could not obtain from the Imperial authorities the right to make in our mint not only Canadian gold coins, but also gold coins for Great Britain, coins which would circulate in Great Britain, as do the Australian coins, and everywhere throughout the Empire. We have conducted some negotiations on that subject, and the arrangement which I suggested in the former discussion is that which we now propose to carry out. We propose that the mint shall be a branch of the Royal Mint of Great Britain. The only difference between the branch of the Royal Mint and a purely Canadian mint will be in regard to the degree of control. In establishing a Royal Mint, the institution will have to be placed under the direction of experts sent out from the Royal Mint. We place a certain sum at the disposal of the managers of the mint, and they have to account to us for it; but the appointments, at all events so far as the principal officers are concerned, will be persons who have had experience in the Royal Mint, or, at all events persons satisfactory to the Royal Mint. We give up there some degree of practical control. But were we to undertake to manage the mint as a purely Canadian institution, we should have to employ experts from abroad, because we have not the persons at hand with the necessary technical knowledge. Therefore, I think that that is no great practical disadvantage. On the other hand, by establishing a branch of the Royal Mint we obtain the desired privilege of making British gold coin. So, when all the gold, silver and copper coins that

are required in Canada are made, if there is time—and there is likely to be time—the machinery can be applied to make British gold coins out of the gold output of Canada. Therefore, we think the mint will be more—

Mr. WALLACE—Will the branch mint in Canada make British silver coins as well as gold coins?

The MINISTER OF FINANCE—No, there are reasons why we shall not undertake to make British silver coins. We make no profit in the production of gold coins, because gold is worth no more in the form of coin than in the form of bullion.

Mr. MACLEAN—We could easily get rich if we could manufacture British silver coins.

The MINISTER OF FINANCE—If we could mint silver into British coins in unlimited quantity we could make a great deal of money; but it would be entirely unreasonable to expect the British authorities to allow us to engage in that enterprise. But, in the making of British gold coins we think there will be sufficient advantage to make it advisable to establish a branch of the British mint. There is a considerable amount of gold required in Canada for the purpose of our reserves. The total quantity of gold, as near as one may say it, now employed in Canada in the Government reserves and bank reserves is probably about \$25,000,000 or \$26,000,000.

Mr. MACLEAN—Is that in bars or in sovereigns?

The MINISTER OF FINANCE—It is largely in British or American gold, perhaps principally in American gold because of our proximity to the United States. American gold passes to and fro more conveniently than British. But, whether British or American does not make much difference, because it has no additional value, but in any case it has only its intrinsic value.

Mr. BORDEN (Halifax)—The hon. gentleman (Hon. Mr. Fielding) has spoken of British gold coins being made in the mint here. What about the Canadian gold coins?

The MINISTER OF FINANCE—Anything that we can make in a Canadian mint will, of course, be made in the branch of the British mint, with the further advantage that we can make British gold coins. We will make enough gold coins to meet the demand of Canada, though I am free to say that that will probably be a smaller amount than many gentlemen would imagine.

For we do not use gold to any considerable extent, and it is no part of our plan to disturb the currency system by attempting to force gold into quarters where it is not required. There will be a certain amount of gold required in our reserve, and a certain amount of gold will be needed to meet the growing demands of the country—though a very moderate amount I think. After the reserves are coined, a very moderate amount of Canadian gold will be sufficient.

Mr. MACLEAN—Will not a certain amount of Canadian gold be required for the purpose of bank reserves? Instead of using American gold they will use Canadian?

The MINISTER OF FINANCE—I think so, a good deal of what the banks hold now, mostly American or British, will be replaced by Canadian gold. Hon. gentlemen will remember that in our currency system, up to a certain point—a point reached some years ago—we require only a moderate amount of gold as security for our note issue, but after that point is passed for every dollar of our issue we must have a dollar of gold behind it. Therefore, with the extension of business as our note currency expands, as we hope it will—as the note currency is an indication of the commercial condition of the country—for every dollar of paper currency we shall need a dollar of gold to place behind it. That will give us employment.

Mr. WALLACE—May I ask when the point was reached to which the hon. gentleman refers?

The MINISTER OF FINANCE—Some seven or eight years ago. The limit is \$20,000,000. Up to that, as I say, we require only a percentage of gold reserve, but after that it is deemed expedient in the interest of solid finance that we should have a dollar of gold for every dollar of paper issued.

Mr. WALLACE—What is the percentage?

The MINISTER OF FINANCE—Fifteen per cent. of gold and 10 per cent. of Canadian debentures bearing the guarantee of the Imperial Government, which are treated as equivalent to gold. But, above \$20,000,000 we must hold dollar for dollar. We think that in these ways, in turning out Canadian gold coins and in the manufacture of a standard gold bar which will pass between the banks, there will be a considerable occupation for the mint. And, when we add to that work the work of our silver and copper

currency and the balance of the time in making British gold coins, there will probably be work to keep the Canadian mint employed. Our desire, however, is to establish it in a very modest way, so that in the future, if necessary, we may enlarge it. But realizing that we do not use a very large amount of gold for our ordinary currency, it is not our purpose to commence it on too large a scale.

The arrangements made with the Australian colonies are that the government of the colony sets apart a certain sum which is deemed to be amply sufficient for the maintenance of a mint. That sum is placed at the disposal of the Imperial authorities—because they control the Royal Mint—and they account to the colony for it. After making a charge for everything that is done in the mint, no matter for whom, and rendering an account at the end of the year, if they have not expended the whole sum, the balance passes to the credit of the colony. What we virtually do by this resolution is to give the authorities of the Royal Mint credit to the extent of \$75,000 a year as a guarantee that there will always be provision for the expenses of the mint. I do not, however, expect that the whole of it will be used. The very basis of the arrangement is that there shall be a safe margin. As I have already mentioned, a number of the officers would probably have to be experts, either directly chosen by the officers of the Royal Mint, or at all events, persons who are satisfactory to them, because in that respect we yield up a measure of control.

Now this resolution deals only with the annual cost of maintenance. There is, of course, another consideration that we must not lose sight of. We must first provide the mint. My hon. friends will have noticed that in the estimates that are now before the House, provision has been taken for some \$50,000 towards establishing the mint. The mints in the Australian colonies are quite expensive. I have not the figures at hand, but I know from my discussion with the directors of the Imperial mint in London that they have spent considerable sums. Again I say we are anxious to begin on a reasonable moderate scale. We have had an outline plan prepared under the direction of the mint officials in London. The building we desire will be a large one-story building, but the front will be two stories. It will be a plain building, not very ornamental, but very substantial. Taking that

outline plan and placing it in the hands of the architect of my hon. friend the Minister of Public Works, I have obtained from him an estimate that the building itself will cost about \$200,000, not more. We hope that on a review he may be able to reduce these figures, but I am giving the House his estimate. Then it will be expedient to have that surrounded by a high fence or wall, surmounted by iron railings, which will make it substantially safe, not altogether lacking in ornament. That we expect will cost \$14,400. Then for fitting up vaults and strong rooms the estimate is \$45,000, making a total cost of the building, with inclosure and vaults, \$259,400. These are the architect's figures. As I say, I hope it will be found they are outside estimates. Then there is the cost of machinery to be considered, which we are advised will be something less than £13,000 sterling, say \$64,000. In round numbers, the cost of the building, with the inclosures and wall and machinery, the whole outfit, will be, as stated by the Minister of Public Works, about \$300,000. We are asking the House to grant an annual outlay not exceeding \$75,000. That will be the outside figure, and I think for our present purposes it will probably be about \$65,000. The Perth mint when first established had set apart for its maintenance £10,000. It was found afterwards that it exceeded £10,000, and the amount was increased to £15,000. So our figures of \$75,000, roughly, correspond with the amount that is set apart for the mint in Western Australia. We think, however, that proceeding on a very modest scale, we may not need the whole amount, and for my present purposes I estimate that the cost of maintenance will be something between \$50,000 and \$75,000, say \$65,000 for maintenance. Then if it is to cost us \$300,000 for building and equipping the mint, that represents an annual charge, roughly, of \$9,000 a year. So if we add the interest on the plant and equipment to the cost of maintenance I think we may say that the actual outlay of the Dominion will be about \$74,000 as near as we can make it. That, of course, includes not only the cost of maintenance but interest on construction.

Now against that we may fairly place our profit on coinage. There is no profit on gold, as I have already said, for the reason that gold is worth no more in the shape of coinage than in any other form. But there is a profit on copper coin or bronze coin,

and there is a very considerable profit on silver. At the present value of silver as compared with the face value of the coin, if we could only make an unlimited amount of silver, as the hon. member for East York said a moment ago, we could speedily get rich.

MR. MACLEAN—Why couldn't you issue a good deal, and not hurt the country?

The MINISTER OF FINANCE—Well, that is a little dangerous. The only thing I will promise my hon. friend is that we will make as much as the country will reasonably absorb, and we will not attempt to force a dollar of silver on the market if the business of the country does not demand it. We want no silver question in Canada. I think that the temptation to increase the issue of silver for the purpose of making money must have been in the minds of some of the gentlemen connected with the banking institutions, who rather shrugged their shoulders a little when this mint scheme was first proposed. I have had quiet intimations that behind their objections the fear of a large issue of silver played a prominent part. I have no authority to say it, but my impression is that that was in their minds to a considerable extent. I do not think there need be any alarm on that score. A weaker country might yield to the temptation to coin silver for the purpose of making money out of it. But I think under any government Canada is likely to have, we should be able to resist any pressure of that kind. I ask my hon. friends opposite to trust us as we should be prepared to trust them on that score, because I do not think that the Canadian people fail to recognize the importance of having a sound system of finance.

Then, as I say, we may set against the cost of our mint the profit of making our coins. We do not aim to make any profit in that way, but incidentally there is a profit. I have taken the figures of a period of ten years in order that I may establish a fair average. I find that the profit on the coinage of copper and silver for ten years has averaged something over \$94,000 per annum. Now if we place that, as we may reasonably place it, against the cost of our mint, we shall find that the mint will be self-sustaining. I have no hesitation in saying that we can save money by not starting this mint, and we could save money by having our Canadian notes made in London instead of in Ottawa, but we have determined that we will not have them made abroad,

but that they shall be made in Ottawa; and that same national spirit which prompts us to desire to make other things in Canada will naturally lead us to desire to make our own coinage as well. So I do not put it upon the mere ground of dollars and cents; but I do say that we do not aim to make a profit out of the issue of silver, and if incidentally we do make a profit out of it that can be placed against the expense of our mint. So we have an annual outlay of \$65,000, as I estimate, the outside limit being \$75,000, taking a medium estimate and calling the expense of maintenance about \$65,000, and adding \$9,000 for interest on the capital spent for building and equipment, we will find, as I judge it, that the mint will cost us about \$74,000 a year. Even if our profit on coinage is no greater in the future than it has been in the past, we shall have a clear profit according to the accounts of the last ten years of \$94,000, which will pay the cost of the maintenance of the mint, and we shall have a balance of \$20,000 still to the good. So that it will be a very paying transaction, unless we are prepared to confess that we are aiming to make money out of the silver coinage, which we are not.

Mr. WALLACE—The hon. Minister of Finance says that the average profit for the last ten years was \$94,000 a year. What amount of copper and silver coinage have we bought during these ten years?

The MINISTER OF FINANCE—The profit on silver for the last ten years was \$845,000, and on copper \$103,000, making a total of \$948,000, and showing an average of the ten years of \$94,873.

Mr. MACLEAN—What is the total silver issue of Canada?

The MINISTER OF FINANCE—Perhaps I shall be able to tell my hon. friend. I cannot off-hand. I think I am correct in saying that about 60 cents worth of silver, converted into coinage, will make \$1.

Mr. BORDEN (Halifax)—In connection with the profit, is that the net profit which my hon. friend speaks of? Coinage must cost us something.

The MINISTER OF FINANCE—Yes, that is the net profit.

Mr. BORDEN (Halifax)—Well, should we not have something more than that if we are going to have our own mint?

The MINISTER OF FINANCE—Of course, this will be the cost of maintenance, and it will be accounted for to us. All the expense that we are to pay will be included in that \$74,000.

Mr. BORDEN (Halifax)—It seems to me that if we to-day have \$94,000 of a net profit, when we come to work our own mint we should have something more than that, because we must be charged surely with the cost of minting in England.

The MINISTER OF FINANCE—Yes, we have to add to that the cost of minting in England, which will be a profit over all these charges to which I have alluded, as my hon. friend has suggested. I thought I had the figures of the total issue of silver, but I cannot give the information to my hon. friend (Mr. Maclean). In connection with this proposal, however, in order to carry out fully the objects which, I think I may say, we all have in view, we consider it very desirable that there should be a purchasing assay office established at some convenient point in the west. Just where that point is at this moment I am not prepared to say. There is an argument, and not without some force, that it should be established at Dawson City, so that the miner could be brought into close touch with the government purchaser of gold. There is another which I think has a great deal of force, that if the assay office were established at a point in British Columbia the miners who come out from the Yukon would come down to that point in British Columbia to do their business, whereas, at present, they might go into the United States. I think in that view, which has been very strongly advanced by hon. gentlemen from British Columbia, both from the city of Vancouver and the city of Victoria, and which has been the subject of various deputations which have urged the matter before me, there is a great deal of force. However, I am not at this moment prepared to say what decision may be reached, we cannot do anything for the present season. The hon. Minister of the Interior, who is particularly charged with matters relating to mining in the Yukon, expects to go to British Columbia and to the Yukon this summer, and probably other ministers as well. I see it announced that the right hon. Prime Minister is to go, and I trust he may find the leisure, although I have no authority to speak on that point; but, at all events, the proper location of the assay office will be a matter of investigation during the

coming season, with the expectation that at the beginning of the next season there will be a purchasing assay office on the Pacific coast, so that the gold may be taken, if not directly from the miner, shortly after he leaves the Yukon, and it will no longer pass to the United States. I am inclined to think that the establishment of an assay office will have a very material effect in regard to meeting the wishes of the people of British Columbia. However that question may be determined I do not undervalue the argument that the assay office should be established on the Pacific coast, either at Victoria or Vancouver. In any case, I think that in making this arrangement now, carefully guarding against extravagance and guarding against anything that would interfere with our sound currency system, the government are responding to the general wish of the country, and I trust that the step which we have now taken will be one which will meet with general satisfaction.

Mr. WALLACE—Would the hon. minister give us some information as to the cost of the assay office and the cost of maintenance?

The MINISTER OF FINANCE—We do not at present propose to ask any appropriation for the building of the assay office. Our expectation is that accommodation can be secured by way of leasing a building, especially if it should be located in British Columbia. The United States, when they established their assay office at Seattle, made provision for \$20,000 a year for its maintenance as a beginning. This is all we have for our guidance, and I presume it is the outside figure.

Mr. CLARKE—Where is the mint to be located?

The MINISTER OF FINANCE—I stated that we are not prepared at this moment to determine whether the assay office will be at Dawson City, in direct touch with the miner, or on the coast, so that it will be instrumental in drawing trade from the Yukon into British Columbia. This question will be investigated by the hon. Minister of the Interior this year.

Mr. CLARKE—Where will the mint be?

The MINISTER OF FINANCE—I beg the hon. gentleman's pardon. The mint will be located in the city of Ottawa. We hope to locate it on our own government land, and at present we are not asking any provision for land.

Mr. BORDEN (Halifax)—I think that the proposal that the hon. Minister of Finance has made is a good one, and possibly in view of the consideration which I mentioned while he was speaking, the debit balance will not be so great as he mentioned in his speech.

The MINISTER OF FINANCE—Yes, I have overlooked that point.

Mr. BORDEN (Halifax)—I think we will all be pleased to know that there is to be a distinctively Canadian gold coinage, and I am sure that the demand for that coinage cannot but be greater than the hon. gentleman supposed, because, as he is aware, there are very great reserves of gold necessarily held by all the banks in Canada. In many cases these reserves are in American gold, and I should not be surprised to see it replaced by Canadian coin which the hon. gentleman proposes to furnish. There is one matter in respect to which I would like to make a suggestion, and it is this: It does not appear that \$74,000 will necessarily be the exact amount which would be used every year. It may be greater or it may be less. But, nevertheless, the hon. gentlemen is proposing to deal with this as a statutory vote. He proposes to fix this by statute as a fixed sum to be provided by parliament every year. I am inclined to think that the proper course would be for the hon. gentleman to pass his Bill for the establishment of the mint, and that we should vote the amount yearly, whether the sum be greater or less than \$74,000. There may be some reason for adopting the course which the hon. gentlemen has proposed. If there is any reason, I would be glad to hear it.

The MINISTER OF FINANCE—There is a reason which, I think, the hon. gentleman will admit, is a sufficient one. The Imperial government have no special concern in this. They are going to allow this to be done simply because it suits our convenience, but, inasmuch as they will, in a sense, become responsible for all these officers, they would like to have a definite arrangement, not an amount voted year by year, but by a fixed statute, an undertaking that Canada, or any other colony, as the case may be, will provide this sum. In the Bill which I shall have the honour to introduce founded on this, we will provide that that sum is to be accounted by the Imperial government to

us from year to year, so that if there is any balance it will be to our credit. This is an outside sum, and is virtually a letter of credit, if I may so describe it, to the Imperial authorities, in accordance with the practice of all the Australasian colonies.

MR. BORDEN (Halifax)—I would regard that explanation as satisfactory so far as I am concerned.

MR. MACLEAN—This is a national measure, and I compliment the government on introducing it. It is a measure which the people of Canada have long wished for, and the people will endorse it. I am not in favour of the issue of a depreciated silver currency in Canada, but it is quite certain that the Canadian people can incidentally use a very large silver currency, and if there is profit in it we should have the benefit of that profit. The proof of our use of silver is the immense circulation of American silver in Canada, and now that we are going to have a mint we ought to take steps to substitute Canadian silver for it. There are millions of dollars of American silver in circulation throughout Canada, the profit on which goes to the United States people. I do not know how we are going to replace it by our own coinage; but a way must be found, and I trust that question will receive the attention of the government. Our subsidiary coinage is copper, and it is true we produce our own copper in this country, but I would remind the government that we have in Canada plenty of nickel, and that it is the very best metal in the world for a subsidiary coinage. Now that we have the mint, I trust that at an early date we will have a nickel coinage at our national mint. It has now come out from the Minister of Finance to-day what the real objection was to the establishment of a Canadian mint. There has been some occult power keeping back the establishment of this mint. I admit that I never could get on to it until to-day, when the minister tells us that the banks fear that Canada should have the benefit of a silver coinage. I do not for one moment favour the issue of silver coinage on a depreciated basis, but I am certainly in favour of as large an issue of silver as will be necessary, and of enlarging it to such an extent that we will drive out the millions of American silver that are now circulated in this country.

MR. WALLACE—The member for East York (Mr. McLean) has not been following the course of public events as recorded in

the newspapers, or he would have seen that the banks have been passing resolutions antagonistic to the establishment of a mint in Canada.

Mr. MACLEAN—Did they say anything about silver coinage?

Mr. WALLACE—A mint would coin both gold and silver.

Mr. MACLEAN—The banks never said they feared a silver coinage until the Minister of Finance told us to-day.

The MINISTER OF FINANCE—They have not told me now, but I suspect it.

Mr. MACLEAN—Yes, and I suspect it now too.

Mr. WALLACE—I congratulate the government on at last acceding to the wishes of the people of Canada as voiced by the opposition in this parliament.

Some Hon. MEMBERS. Oh.

Mr. WALLACE—I do not know what hon. members opposite are laughing about. Last year and the year before we pressed upon the Government to establish a mint, but the Minister of Finance was hedging and offering objections to it. I am glad now that the minister recognizes the force of the contentions we have made in regard to it. The Minister of Finance has told us that the profit on our silver coin is \$84,000, and calculating that silver costs 60 cents for a dollar's worth, that would represent about \$212,000 worth of silver coined each year, leaving out the cost of manufacture. Those doing business in Canada know that there has always been a scarcity of Canadian silver, and of course when we have a mint of our own under this new arrangement, we can have supplies of silver almost at a day's notice, as the Minister of Railways gets his coal. I am exceedingly pleased to know that the Government is about to establish this mint, as well as an assay office. I regret that arrangements cannot be made for an assay office this year, because we know that great commercial advantages are accruing to the Americans from the fact that they have assay offices at Seattle and San Francisco. The minister has indicated that the expense of an assay office will not be very great, and I would therefore suggest to him that there should be one established in Dawson city, as well as in Victoria or Vancouver in British Columbia. There would be no advantage in having one in Ottawa or in any of the eastern cities, but it will certainly be for the benefit of the country to have these assay offices on the Pacific coast.

Mr. HENDERSON—I scarcely share the view of the hon. member for East York (Mr. Maclean) that the large circulation of American silver throughout Canada is owing to the scarcity of Canadian silver.

Mr. MACLEAN—I did not say that.

Mr. HENDERSON—Then I misunderstood the hon. gentleman.

Mr. MACLEAN—I simply said that millions of dollars of American silver were in circulation in Canada, and I expressed the wish that Canadian silver should take its place.

Mr. HENDERSON—I fail to see how the issue of a larger amount of Canadian silver will displace the American silver brought into Canada in the ordinary business intercourse between the two countries. That matter will have to be righted in some other way. I wish to ask the Minister of Finance if it is his intention to issue a twenty-cent. piece?

The MINISTER OF FINANCE—No.

Mr. HENDERSON—I am very glad to hear that, and I am sure that the business men throughout the country will be delighted to know that we are not going to have any more twenty-cent pieces in circulation. I wish that the minister could adopt some means by which the twenty-cent coin now in circulation would be withdrawn. If it could be declared that in six months or a year the twenty-cent piece will cease to be a legal tender, or if in some other way it could be forced out of circulation, the business people of Canada would be very thankful to the Minister of Finance. Then I assume that the coins will be 5, 10, 25 and 50-cent pieces. I am not very favorably impressed with the silver dollar.

The MINISTER OF FINANCE—I do not want to speak definitely about the dollar. It is worth considering.

Mr. HENDERSON—I think a gold dollar coin is too small for Canada.

The MINISTER OF FINANCE—I am glad to say that I agree with almost every word my hon. friend has uttered. He is probably not aware that we have not made any 20-cent pieces in Canada since confederation. The 20-cent piece is a nuisance, but any one who examines it will see that it is a Newfoundland coin.

Mr. MACLEAN—I had two yesterday.

The MINISTER OF FINANCE—They must have known that my hon. friend had silver on the brain.

Mr. MACLEAN—I gave them to a blind man.

The MINISTER OF FINANCE—Did you give them for quarters?

Mr. MACLEAN—No.

The MINISTER OF FINANCE—The government of Newfoundland adhere to the 20-cent piece. I wish they would not, because it leads to a great deal of embarrassment. With regard to American silver, I am not sure that it can be got rid of as easily as my hon. friend supposes. If any means can be devised by which it can be replaced by Canadian silver, we shall be very glad to adopt them.

Mr. MACLEAN—What are the denominations of the gold coins?

The MINISTER OF FINANCE—We have not worked that out yet. The \$5, unquestionably, the half sovereign, or its equivalent, \$2.50, and the \$10. I do not think we shall go above the \$10 gold piece.

Mr. MACLEAN—The hon. gentleman might find an outlet for the Canadian sovereigns if the British government would have their sovereigns for the fleets on the Atlantic and the Pacific minted in Canada.

The MINISTER OF FINANCE—The sovereign which we make in Ottawa will be current legal tender in any country where the British flag flies, and will naturally be taken in any part of the world.

Mr. EMMERSON—It appears to me that the circulation of American silver is a very serious evil, and I think it arises from the fact that a great deal of that silver comes into the country through different channels, and is kept in circulation because it passes among the people without discount, while, if you seek to deposit it, the banks charge discount on it. If the hon. Finance Minister would consider whether some means might not be devised to have the banks redeem that silver at par, and then have it removed from the country, it seems to me that would make the way clear for the circulation of our own Canadian silver.

Mr. MACLEAN—I will tell the minister one way in which it can be regulated. I know that there are agencies at work which bring in American silver in thousands of dollars by the boats coming to Toronto, and by other means, in order to get it circulated in Canada. There should be some way by which that silver should be made to come through the custom-house.

The MINISTER OF FINANCE—There is a very simple way by which it could be got rid of. The party to whom it is offered might refuse to take it.

Mr. MACLEAN—You cannot.

The MINISTER OF FINANCE—You can. It is not a legal tender. The circulation of American silver in Canada is one of the incidents of our close relations with the United States. Along the border, and wherever a railway crosses the line, you will have large amounts of American silver coming in, and if you cleared it out one week, I am afraid you would find it there again the next week.

Mr. BROCK—We know that there is a large profit in converting silver into coin, and if you gave a little better value by making your silver coins a little heavier than American silver, the Americans would take it in preference to their own, and in that way you would get a very large circulation. There is a profit of from 25 per cent. to 30 per cent. at the present time in the coinage of silver, so that you might get rid of the difficulty suggested by the hon. member for East York and give a great deal of work to your mint by giving a little better value in your coin. And I do not know but it would be a good idea, because if you could get into circulation in the United States several millions of dollars of Canadian silver, the Canadian mines and the Canadian mint would get the advantage.

Mr. ROSS (South Ontario)—I wish to congratulate the Government and the people of Canada on the measure that has been brought in to-day. As a Canadian, I feel a thrill of pleasure to find that we, ourselves, are at last going to make the money which we use in this country. It is not given to everybody in this country to use \$1 and \$5 bills, but it is given to almost everybody to use the coppers, the 5-cent pieces and the quarters, and when we have our own Canadian stamp on the

money of the country, we feel that we are part of the empire, and a thrill of patriotism runs through us. As the hon. member for Halton (Mr. Henderson) says, the 20-cent pieces are a perfect nuisance, and the Government should call in every one of them. They cause a great deal of disturbance in giving change, they are so near the size of the quarter. Then, the mutilated coins cause a great deal of trouble. In my business we get thousands of small coins—five and ten-cent pieces and quarters—which are in such a mutilated condition that it is impossible to read them and tell their significance. When we get the new mint, I presume the Government will pay special attention to these points, and will give us a clean coinage fit for the people to handle, and such as they will be proud of. We know the difficulty we have with the paper currency. A great many of the bills we get are so dirty that they are not fit to handle. These things should be corrected. I am glad that the Government has brought in this measure.

Mr. MACLEAN—I hope the minister will say that he is in favor of the issue of a silver dollar, which will give the country an incidental profit and a clean coinage. I am not arguing for a depreciated currency, but there is no reason why, instead of these dirty paper bills, the Government should not issue a clean silver dollar and plenty of them.

The MINISTER OF FINANCE—The various coins to be issued are a matter for consideration. I am not giving any final decision to-day.

Hon. Mr. HAGGART—What about the very practical suggestion of the hon. member for Westmoreland (Mr. Emmerson)? Cannot the minister suggest some means by which American silver can be redeemed at par at the different banks throughout the country?

The MINISTER OF FINANCE—I would not care to answer off-hand. The great railways have a means of disposing of American currency, but I do not wish to incur any needless expense. We want to get any profit there is in this matter ourselves, and not give it to other people. However, the whole discussion has been very profitable, and I will take care that it receives every consideration in my department.

Mr. CLANCY—This is a very difficult question, because the customs of the people with regard to American silver are greatly localized. The banks along the border take it at par.

Mr. MACLEAN—On the other side Canadian silver is refused, although we take American coinage all over Canada. I was in an American city the other day, when a telegraph operator implored me to take a Canadian quarter, which, he said, had been passed in upon him, and he could not get rid of it.

Mr. BELCOURT—I quite agree in what the hon. member for East York has said. His remarks can be applied not only to silver, but to Canadian paper money as well. On many occasions in the last fifteen years, when travelling in the states I have strongly resented the conduct of our American neighbours with reference to our money. Practically in New York there is no place where they will take Canadian money—either Dominion currency or bank notes or silver—except at a discount.

An Hon. MEMBER—They take it at the Waldorf.

Mr. BELCOURT—That is probably the only hotel where they will take Canadian money and not charge a discount. Go to the shops on Broadway or in Buffalo, Chicago or anywhere on the Pacific coast or elsewhere in the American union, and they will not look at Canadian money. It is a source of humiliation and of great inconvenience to Canadians travelling in the United States that our money, particularly paper money, which is equivalent to gold in value, should be refused in exchange for the American silver currency, the real value of which is only about sixty-seven cents in the dollar. I do not know if there is any remedy, but I think it is a matter to which the hon. Minister of Finance might very well direct his attention.

Resolution reported, read the second time, and agreed to.

The MINISTER OF FINANCE moved for leave to introduce Bill (No. 143) for the establishment and maintenance in Canada of the Ottawa branch of the Royal Mint.

Motion agreed to, and Bill read the first time.

THE SENATE, 22nd May, 1901.

Hon. Mr. MILLS moved that the House resolve itself into a Committee of the Whole on Bill (143) "An Act respecting the Ottawa branch of the Royal Mint." He said: It will be seen that this Bill provides for the establishment of a branch of the Royal Mint, here in Canada, and an expenditure may be incurred not exceeding \$75,000, for the purpose of establishing this branch of the mint. There is a strong public sentiment in favor of the object which this Bill is intended to serve, that is, for coining into money the gold that is mined in the different parts of Canada. Whether the public will derive any advantage from that or not is another question, but that there is a sentimental feeling in favour of the course for which this Bill is intended to make provision, there can be no doubt whatever. It is hardly to be expected that gold will become a medium of exchange instead of bank notes in this country. The banks have been remarkably safe and stable in their character, and there can be no question that paper is a more convenient representative of money and medium of exchange than gold or silver. We can represent a hundred pounds as easily by bank note as we can represent one dollar. It requires no more space, and as an article of money, it is no more inconvenient than if it were for a very much smaller sum. That the coining of gold in Canada may affect the government circulation and may affect to some extent the bank circulation, there can be very little doubt, and to that extent it will affect the profits of the Government on the Government notes now in circulation, and correspondingly affect the profits of the banks upon their circulation; but to what extent it will become a medium of exchange is a mere matter of conjecture. It may affect it to a very considerable extent, or it may simply, after being coined into money, be exported from the country and go into circulation in those parts of the empire where the banking system has not been found so complete and so convenient as the banking system of Canada, but there can be no doubt that there is a feeling amongst a very considerable class of our people, based upon a patriotic sentiment, that the gold that is mined in Canada ought to be coined into money in Canada, and this is to that

extent a compliance with that feeling. It is a yielding to a patriotic feeling that exists in the country, and may be of no other advantage than the mere compliance with the sentiment to which I have referred, but the people of this country would not be satisfied without a very great deal of argument and discussion if we were to refuse to comply with their wishes in this regard.

Hon. Mr. DRUMMOND—I desire to state that in what I am about to say I represent my own views exclusively and represent no interest otherwise. This Bill has come up to us from the House of Commons with such a universal acclaim of assent on both sides, that it is difficult, perhaps impossible, to hope to defeat it, even if that were my object. It is not my object to press any objections which I may submit to the judgment of this House to an issue, because I think it well that this subject should be threshed out, and as the Bill is permissive in its character, and merely gives the Government the power of carrying out the prospective establishment of the mint, if they see fit to do so, I am not disposed to go further than to give a few arguments which they may digest at their leisure, and which perhaps may have something to do with a final determination. I am the more readily impelled to do so, as there is an air of fallacy running throughout a great deal of the debates one hears in the newspapers, and as I have to-night for the first time had the privilege of reading *The Hansard* and knowing what has been said in the House of Commons, I can perceive through that also that vagueness of apprehension and doubtful logic which impel me to say what I do now. I object, in the first place, to any legislative interference with the present financial position of the country. The circulating medium of Canada is, probably, without being a gold issue, as nearly one as any country has ever seen. It is perfect in itself, self-regulating, and has been the envy and the admiration of outside communities, and the fact that there have been some disastrous failures in banks issuing notes has had no effect whatever upon the holders of their promissory notes, but, as a matter of fact, in consequence of the system whereby a deferred payment of these notes bears interest at a considerable rate, they have been sought after by institutions and have been taken up accordingly. The public, in fact, have not suffered in any degree from the failure of those banks, as far as the holders

of notes are concerned. It is always dangerous to intrude on a system which is reasonably near perfection, and I look with some little apprehension on any project having for its ultimate result the interfering with and modifying our present system. If the proposed mint were to occupy itself with the minting of gold and silver and other coins exclusively Canadian, we could manage it ourselves, but as it is perfectly obvious that no establishment equipped for the purposes of a mint would find more than a few weeks' occupation during the whole year in minting an exclusively Canadian metallic currency, the project now before us proposes to fill up the time in coining English sovereigns. The consequence of that is, beyond all question, that it must be, as is stated in the Bill, a branch of the Royal mint. Not only so, but the government and management of the institution must be English. The managers, the deputy masters, and I suppose the most responsible officials must be delegates from the English mint. The estimated cost of the establishment, according to the hon. the Finance Minister, is supposed to be, in plant, machinery, and building, some \$320,000 or \$330,000, the interest on that sum, and the maintenance of this building and plant, altogether in his estimate making an annual charge of \$75,000, which is provided for in the Bill. Now, the first question which will come up is, is it likely to be a profitable transaction? I omit any reference to the question of sentiment, because there is a question of sentiment at the bottom of the desire to see a Canadian coinage. We have it in silver, we have it in bronze, but not in gold, and we are driven to use United States or English coins. To avoid that is a legitimate sentiment, to my view. But there is no call, none that I know of—I have never seen any evidence of it—on the part of the public for a metallic golden coinage. As has already been said by the hon. leader of the House the public is accustomed to, and satisfied with bills, and, as far as the interest of the country is concerned, you will please note the difference between the metallic coinage of gold, and paper representing the equivalent for gold, for, as I have already said, the present paper currency of the country is practically a gold coinage and is well assured. The banks have the power of issuing notes to the extent of their paid-up capital. The Government has the right of issuing up to \$20,000,000 with only a gold

reserve, according to one piece of information, of 15 per cent. according to another 10 per cent—I think it is ten per cent. When it exceeds twenty millions of dollars, they must have dollar for dollar of a reserve, and as the present issue is twenty-eight millions of dollars, in round figures, some ten millions of dollars must be held in reserve in gold by the Government for that issue. Now, I take it—and this is my argument with reference to the relative economy of the paper issue as compared with the gold issue—that to the extent of the gold held in reserve for the issue, there is no real profit on the issue at all. If, on the credit of the Government, or the credit of the banks, the public are content and well content to take a paper note instead, and no gold is to be held in reserve, the average rate of interest for the time being is a clear gain on the issue of that circulation. But if a gold reserve equivalent to it is held, then there is no gain, because the gold itself costs money. For instance, the \$10,000,000 held by the Government as security for their notes cost them ten millions, no more or less. If that ten millions had been borrowed, for example, they would have had to pay interest on it. Now, in so far as the substitution of the gold coin for paper is concerned, it is not a matter of profit. On the contrary, it is a clear loss that has not been taken into account. The Finance Minister, in proposing the erection of this branch of the Royal Mint, took into consideration what he knew to be the fact, the profit that the Government now has from the coinage of silver and copper, but that is evidently improper. I presume the arrangement the Government make with the English mint at the present moment is that for a current charge, which is moderate in amount, the bullion is cut up, stamped, and handed to them. Now, the silver coinage consists of a token, which is branded one dollar, but really contains only 60 cents worth of silver. There is the profit on that. There is likewise a profit on the bronze coin, and altogether these two profits amount to about \$94,000 a year. To my mind, it is entirely unwarranted to take a profit which we have at once without a mint and credit it to an expenditure which we propose to make in building a mint. I do not think there can be any argument on that question. We have got this profit already without this expenditure, and we will get no more when we make the expenditure, because I will proceed

to show that, in my opinion, the new mint never can make any money more than we are making already, for it is absolutely the case that there is no profit in coining gold—none whatever—on the contrary, I believe it to be a fact that the Australian mints lose money. Talking of Australia, the example of Australia as having mints of its own is held out to us. But the position of Australia and the position of Canada are totally different. True, both are colonies, and dependencies, but the local situation of Australia and the local situation of Canada are entirely different. Isolated from Great Britain, isolated from Europe by a very long sea passage, it would occur to Australians readily enough that the gold which is produced in their own country might be utilized for their own purposes, and when that is granted they drop into the same system as is contemplated here, and with the consent of Great Britain, their gold is minted into English sovereigns, which circulate in Great Britain. The mere cutting and clipping of a metal into a definite weight, and stamping it, costs very little money, and in regard to gold it adds nothing to the value, so that there is no profit on the gold. The profit on the silver we have already. The profit on the copper, or bronze, we have already, and there we are. We have before us the question whether, from a matter of sentiment, a desire to see the thing going on under our own eyes, we shall expend three hundred and fifty thousand or four hundred thousand in plant, and have an establishment, the running of which will, in my opinion, be a constant drag to a considerable extent. If we coin Canadian gold bearing the name of Canada and bearing the denomination, let us say, of two and a half, five and ten dollars, that coinage will be totally and absolutely valueless, except as bullion outside the borders of Canada. Obviously it will not circulate in England—it cannot. The United States people will take very great care that it does not circulate there, for they are sharp enough to turn our bills back, and we are weak enough to permit theirs to circulate to a large extent in our country.

Hon. Sir MACKENZIE BOWELL—Hear, hear; and silver, too.

Hon. Mr. DRUMMOND—And the old fable will be realized in that instance also, and the bigger bully will carry the day. We will have no chance whatever of having an outlet for the various denominations of coin in the United States. So that, if an emer-

gency should arise—let us say, for instance, an emergency which arises every now and then in times of peace—I think I will be backed up by instances in which the sudden emergency arises of sending gold to New York or Chicago or some place for Canadian purposes. United States gold is legal tender the very moment it reaches its destination. Let us send Canadian gold and it is bullion only. After due assay, it can be handed over and sold as bullion, but not otherwise. Consequently, the mere fact of minting that gold counts for nothing. If we had it in dust or in bars, or in any other shape, it would be equally marketable and equally available for the purpose of a sudden demand. Take the other way; our banks, it is quite true, hold a certain proportion of gold—not a certain proportion; I am wrong in saying a certain proportion—they all do more or less hold some gold. There is a talk of a reserve, but according to my reading of the Banking Act, no bank is called upon to hold a specific reserve for its liability. All that the bank takes care of is that of the reserves which are held by the bank, not less than forty per cent. shall be in Dominion notes, and I have known an incident happen in which a great bank has been fined for having inadvertently too much gold. That sounds like a tale of Baron Munchausen, but it is a fact that a bank in this country has been fined for having too much gold. However, that is apart from my argument, which is that the banks which hold gold have, nearly all of them, more or less, agents or correspondents and business in New York, Chicago and great mercantile centres, and do more or less business there, necessarily, for their customers, and so on, and a remittance of gold is an almost every day occurrence or a frequent occurrence, and a pure Canadian issue of gold would not be available for that purpose, or at least would be only equally available with bar gold or gold dust. There is sometimes a confusion on this subject—I noticed it to exist in the House of Commons—between an assay office and a mint. To my mind the establishment of a Government assay office, or more than one, where gold is produced, is not only desirable, but absolutely essential.

Hon. Mr. MACDONALD (B.C.)—Hear, hear; that is the right thing.

Hon. Mr. DRUMMOND—When a miner comes down with gold dust mixed more or less with foreign matter, as all of it is, he ought to have the power of going to an institution which has no interest whatever in cheating him, getting his gold assayed, and obtain a certificate which he can take to the nearest bank and get the money and buy goods. So that I give my unhesitating approval if it is a part of the Government project, to the establishment of Government assay offices duly equipped, and no reasonable amount of expenditure in equipping them properly should be a consideration for a moment. Now, holding that a mint in this country would certainly yield no profit and would be only occupied for a very short time in coining Canadian coins, we have to consider the question from the point of view which an industrial expert, or a man accustomed to business, would take. We are to look upon the further question, can any profit be made in the coining of English sovereigns? It is contrary to all experience—contrary to my experience, and I am sure it is contrary to the experience of every man of business here—that a small establishment—a remote establishment, with the cost of superintendence spread over a small value, can ever be conducted as economically as a large one doing a big business. That is so self-evident that I will not argue it, and I have therefore the conclusion forced upon me that it is impossible to do the work ourselves in a Canadian mint as economically as it is done for us. But I am going perhaps a shade too far there, inasmuch as I do not actually know at this moment what charge the English mint exacts from Canada for the mere mechanical act of weighing and stamping, but I presume that it is a moderate charge. I will go the length of saying that I do not believe, under any circumstances, that a Canadian mint can coin it cheaper than an English mint can do it—that is, apart from the charges. I notice that one hon. gentleman in the House of Commons went the length of recommending the government to coin plenty of silver and they would make plenty of money. There is the silver question in a nutshell. There it is *redivivus*—by some necromantic art establish that sixty cents is a dollar, and get the people to take it in limited quantities we certainly will make a very profitable thing of it. But can you? One fear that I have from the establishment of this mint, is that it may probably introduce the

question of unlimited coinage of silver, given the difference between sixty cents and a dollar as a temptation, and you will have the silver question upon us before you know where you are. I presume the intention of the Government would be to take all the gold dust, or unmanufactured gold that was offered to them, at a price. They would have to give a price fully equivalent to what could be got elsewhere, perhaps a shade better. They would give the current value of the gold at the time, and take all that there was of it. Have the Government any statistics as to the quantity of gold which would be brought to their mint under these circumstances? Have they any idea how long that gold would keep the mint going? I have had a calculation made that the coinage would not keep it going more than three or four months in a year, and, if so, the cost of running the mint would be considerable. I look at Whitaker, and I find that the deputy minister of the mint—who I presume is the man charged with the oversight in England—gets fifteen hundred pounds a year. That is seven thousand five hundred dollars—a good deal more than one of the Chief Justices of one of our provinces—in Sydney, N.S.W., he gets eleven hundred pounds, and in Melbourne twelve hundred, and the superintendent below him gets nine hundred. I presume it is beyond all question that the gentleman to be sent here by the British Government and put in charge of our mint would receive the same. We could not give him any less, and I can imagine the feelings of the deputy ministers and civil servants generally, who are receiving two or three thousand dollars a year, when they have a gentleman with easy duties earning double. That is not a very serious matter, however. I come to the point that with the coinage of gold it is sure to flow into the banks, and as long as the present provision of the Banking Act lasts, calling for forty per cent. of the whole of their cash reserves to be held in Dominion notes, a bank might find itself on the last day of the month in the dilemma of having a heavy deposit of gold which they had to get rid of before the day was out, on some principle or other, and no doubt they would have to ship it by express out of the country and wash their hands of it. So that there would be a constant effort on the part of the bank to get rid of the gold which would be handed to them, or the changes in our banking legislation, which are sure to follow with

commerce here. I do not see that there is going to be any equivalent returned to us for the institution of this new manufacture. I may mention one objection to the denominations of two and a half and five dollars. The coin would be indistinguishable, I fancy, in size and weight, by ordinary methods, from the English half-sovereign and sovereign, and in a rough way the public, if they ever took these coins outside of Canada, would be very apt to say, "Oh, this is just a sovereign, and I will give you a sovereign for it," and you would lose sixpence on each coin, or something like that. So that, I should say that two dollars and four dollars, the present Dominion denominations, would be far better. I do not think that beyond a few coins that may be held by people, just as postage stamps are accumulated, a demand for gold coinage exists in this country. In calculating, therefore, the financial results of this new enterprise, you must add to loss already alluded to of \$75,000 a year due to capital expended, an indefinite amount due to insufficient employment of an expensive staff, and a still larger and more formidable charge due to the displacement of the government issue of Dominion notes, of which I estimate there are about \$18,000,000 not covered by gold reserves. You are therefore faced by this dilemma, if the public does not take kindly to your gold coinage, your mint will not be employed. If it does, your Dominion note issue will be curtailed, with a corresponding and indefinite deficit to be charged to this enterprise. I do not give the mint the slightest share of the profit now being made in the coining of silver and bronze, but I debit it with the loss which will accrue from the diminished circulation of notes both of the Government and of the banks and a much larger proportion to the Government than to the banks. Finally, I think any government should hesitate before disturbing a financial system which has been proved, through good times and bad times, to be equal to the demands of the country, to be safe, simple, inexpensive and satisfactory to the community at large. I merely throw out these remarks as pertinent to the question at hand, and if the Bill is passed, as I have no doubt it will be, for I have no intention to oppose it, they will furnish the Government with food for reflection.

Hon. Mr. MACDONALD (B.C.)—There is no doubt, the great want of the country, and of the gold-producing part of the coun-

try specially, is assay offices. They will be a convenience to the miners, and a source of profit to the country, and they should be taken in hand before a mint is established. As to the profit or loss from a mint, I am not prepared to say anything, but the quantity of gold required in the country is so small, that I do not think the mint would pay. I hope the Government will urge first of all, the establishment of assay offices, at Dawson and in British Columbia. The country would get a profit from it and keep the gold in the Dominion. I urge the Government to see, before establishing a mint, that there are assay offices established.

The motion was agreed to.

The House resolved itself into a Committee of the Whole on the Bill.

IN THE COMMITTEE

Hon. Mr. MILLS—I might say there is scarcely anything in the observations which were addressed to the House, before going into committee, by the hon. senator from Montreal, from which I at all dissent. I think that every member of the Government has considered all the points which the hon. gentleman has brought forward, and no one is expecting that any important profits could be derived from the coinage of gold and silver in this country, or any special advantage will be derived by the people of this country by putting gold into circulation, because, to the extent it so circulates, it will no doubt displace the bank circulation. My opinion is that it will be found that it will not pass into circulation in this country to any extent. It would only be during a period when there might be a run upon the banks, or some distrust for the moment created, that the people would, for a short time, ask to be paid in gold coin; but except under financial excitement of that sort, the circulating medium that is now put in the hands of the people by the banks of the country, is likely to continue. I do not think there will be any loss on the coinage in this country. There is not in England. The alloy is supposed to pay the expense of coinage, and interest upon the value of the gold deposited for the short period that elapses between the time that bullion is put in the hands of Government officers until it is converted into money.

Hon. Sir MACKENZIE BOWELL—But gold is the principal medium of circulation in England and not bills. That makes all the difference.

Hon. Mr. MILLS—I know it is the principal circulation, but my hon. friend will see we could not pay more for coinage here. They are to pay expenses, and interest on the value of the gold deposited from the time it is put into the hands of the officers of the mint until it is converted into coin. It might be that the profits here would be very much less, but it is perfectly obvious that you could not undertake to pay a larger sum for coining here than is paid in the United Kingdom or in the United States, for if you attempted to do that, you would at once have bullion from the United States, or from other countries, sent in here for the purpose of being converted into money. There would be a larger profit on the bullion in Canada, if that were done, than anywhere else. So that there is never likely to be any extra sum paid in that respect. If the coining does not pay expenses of course the loss must fall upon the public treasury of the country, and I have no doubt the cost of coining a pound in Canada will be more than the cost of coining a pound in England, on account of the smaller amount done here than in the United Kingdom. There is also this fact to be borne in mind, that the loss of the bank note is an intrinsic loss only to the extent of the cost of engraving and printing the note. While the individual who holds the note may lose five pounds, if it be a five-pound note, the bank itself would gain the five pounds, so that the loss of the individual would be undoubtedly the gain of the bank. The actual loss, I say, is only the cost of printing and engraving a note. That is not so, of course, when a gold coin is lost, because that is an intrinsic loss to the value the coin represents, which is entirely different from the loss of a bank note, and so, both in the matter of convenience and in the matter of risk, our present system is, no doubt, more advantageous than any system of metallic circulation that could possibly be devised.

Hon. Sir MACKENZIE BOWELL—Has the hon. gentleman considered this point; what is to become of the gold coin made in this country? If it does not enter general circulation, and take the place of bank notes or Dominion notes, what is to become of it? Could it be sent to England in payment of our

debts? Would it be a legal tender there? You could not send it to the United States, for it would not be legal tender there. I remember a circumstance which occurred while I was acting for Sir Leonard Tilley for a short time. The demand for gold in the United States was very great, and a large profit accrued to the bankers who had the gold, and sent it there, and they made what might be termed a run on the Dominion treasury for gold. They presented Dominion notes, and demanded gold for them, until the gold held in reserve by the Government was almost depleted. On consultation with the deputy minister, we decided that the only way we could possibly stop that run was to cable to England to send over about half a million in gold. It was done in about ten days, and as soon as the bankers presented the bills, they were offered British gold coin. They said, "We cannot use this in the United States; it is not legal tender there." That stopped the run. I mention this fact to show you of what use gold manufactured in Canada would be to pay debts in the United States. If you could, I could easily understand how it could be used. If it goes to the United States, it must go as bullion, and be re-minted, I suppose, into United States coin. What is to become of it? It must either go into circulation or be sold as bullion. I am fully in accord with the sentimental part of the measure.

Hon. Mr. MILLS—A part of the gold coin might be held by the banks, under the existing law, as a portion of their reserve. A part of it, if you were to coin \$5 or \$2½ pieces, might go into circulation in the United States at its par value. My hon. friend has never seen gold coins of the United States, offered in payment of a debt in this country, refused for their face value?

Hon. Sir MACKENZIE BOWELL—I will tell you where I have seen British gold coin refused. I saw an English sovereign refused in Honolulu, and a Yankee who was present exclaimed: "By Jove, I never saw gold refused before."

Hon. Mr. MILLS—I have no doubt a very considerable part of the money coined in this country may ultimately disappear in the payment of half-yearly interest upon our obligations, and a part of it may go into circulation in the neighbouring republic. I do not apprehend that there will be any difficulty in that regard. I do not think that it can go into permanent circula-

tion in this country and displace the bank notes. If you were to have a bank failure, you might have a few parties demanding payment in gold, but it would only be for a very short period indeed. I do not apprehend that this branch of the Royal Mint, if established in Canada, is going to seriously interfere with the bank circulation. My impression is, that when the patriotic sentiment is satisfied with the experiment, they will not insist upon a substitution of gold coinage for the present paper currency of the country.

Hon. Mr. Forget—I am quite in accord with the sentimental part of the project myself. I think it is a good move if we are willing to stand the cost of it. I believe it is going to interfere with the circulation of the Dominion and bank notes in time. It will quietly take the place of small notes, because people prefer very much to have clean gold pieces to having dirty bills, as ours are for the most part, in their pockets. An hon. gentleman near me says that the dirtiest bills in circulation are the Dominion notes. That is the only circulation, I believe, you are going to have. It will be a progressive circulation with the public, not with the banks, unless you prohibit the circulation of United States gold coin in Canada. Unless you do that, the banks will take United States gold in preference to Canadian gold. Why? Because, while our own people might use it, Canadian gold will not serve the object of a business man who trades in the United States, or even in the United Kingdom. If I have to remit to New York to-morrow a million dollars, as I have had to do more than once, it must be in gold, and this gold must be available the moment it reaches Wall street. If our Canadian banks are obliged to have Canadian gold, I will not be able to get any other gold. When I send it to New York in payment of my debt, I will have to send it as bullion, that is to say, New York will receive the gold, because gold is gold all over the world, but being stamped as Canadian gold, it will not be taken there except as bullion, to be assayed, and the value will be put upon it. It takes two or three days to do that, and I will be allowed whatever the assay office says it is worth. I will be a loser.

Hon. Mr. MILLS—You will be charged the rate of exchange.

Hon. Mr. FORGET—The rate of exchange will be against Canada, naturally. For that reason, I think our Canadian

banks will not take Canadian gold as a reserve, because it will be good only for domestic purposes. They will not be able to pay their debts abroad with it. And then the banks, knowing that they will never have any demand for Canadian gold, naturally will not accept it from the public. They will take United States gold, or sovereigns, in preference, so that the circulation of Canadian gold, you will find, after a few months, will be curtailed. You will have a good circulation the first year, perhaps, and possibly it may go up to ten millions of dollars, but after you have reached a certain figure, it will remain there, and you will not be able to force any more on the public, unless, as I said before, you prohibit United States gold circulating in this country, and to do that you will have to amend the banking law, and injure the trade of the country in general. That is my opinion and the way I look at the question.

Hon. Mr. MILLS—Do I understand the hon. gentleman to contend that if we were to coin here, in a branch of the Royal Mint, sovereigns instead of \$5 pieces, they would then have the same value, if they were of the same weight and fineness, as the English sovereign?

Hon. Mr. FORGET—Yes.

Hon. Mr. MILLS—And they would go in the New York market the same as the English sovereign?

Mr. FORGET—English sovereigns are not accepted there. If you have to remit to New York you must remit in United States coin. They will take other gold coin as bullion, but not as coin. As I have said, I have remitted once or twice within the last five or six years a million dollars at a time to New York. I had to get United States gold. Of course, the gold has its value, but when you remit to New York in panicky times, or a merchant pays his debts in big financial transactions, it must be available immediately the day it reaches New York or, if it is not, they will charge interest as if the debt had not been paid. You have to pay interest until you are told the value of your bullion. It may take a day or two days for that. I have had no experience on that point. Every time I remitted I bought United States gold on the market, because I knew very well that I could not send sovereigns. They were not legal tender.

Hon. Mr. DEVER—Were they taken at a discount?

Hon. Mr. FORGET—It is practically a discount—the gold is taken as bullion. I think my hon. friend from Montreal, (Hon. Mr. Drummond) will corroborate what I have said.

Hon. Mr. DRUMMOND—Yes, I do. When you send gold to New York it is a case of hurry—it must be at once. You must not give the man who is to get it the option of refusing it. You could not do that with anything but United States gold. Your gold is gold, and will be taken as bullion when duly melted and assayed.

Hon. Mr. FORGET—The move is a good one. My hon. friend from Montreal has a large interest in banking. I have also, indirectly. I believe this will interfere with the circulation of bank notes and still more with the circulation of Dominion notes. It is not known generally by the public, but we know it in our business, that if you present ten, fifteen or twenty-five thousand dollars of legal tenders at the Receiver-General's office in Montreal and demand gold for it, you cannot get it. The public supposes that the government is obliged to redeem its notes in gold. Well, they will not give you gold for it; they say "the notes are legal tender."

Hon. Mr. MACDONALD (P.E.I.)—Why?

Hon. Mr. FORGET—I do not know, but it is a fact. So if you want to make a circulation of your gold you must redeem your legal tenders. You must pay any man who goes to the Receiver-General's office, in any city of the Dominion, gold when he wants it. If you do not do that, as I have said, the circulation will not increase. At the first, while it is a new thing, everybody will be glad to get the gold. Everyone would prefer to have gold rather than silver coin in his pocket, but there is a limit to that. After a few months you will find you will have to do something—either amend the banking law, or pay gold for your legal tenders, to increase the circulation of the gold coin.

Hon. Mr. DRUMMOND—The purpose of the few remarks I have made is simply to place before the Government the fact that this is not all plain sailing, and that they ought to consider well before they break in on a system which experience has proved to be satisfactory and equal to the demands of the community.

Hon. Mr. MILLS—My hon. friend fully realizes also that a paper circulation is a promise to pay. The circulation of gold is payment. You cannot have a dollar in paper put in circulation without someone incurring a liability to that extent. If you have \$45,000,000 in bank notes in circulation, somebody in the country, or a number of persons in the country, must have incurred indebtedness to the bank to that extent. Not a dollar of paper money can be put in circulation without incurring indebtedness and borrowing money to that extent. That is not the case with gold or silver put in circulation. The gold or silver is absolute payment. A bank note is a promise to pay, and is value only on account of the undoubted credit of the person who has made that promise. In this case, it may be that, when the gold is coined, you may stimulate the business of the country so as to require a larger amount of medium of exchange than you required before, and if that be so, the bank circulation and the circulation of Government notes will be less interfered with than might be expected by putting a gold coin in circulation. But I have no doubt of this, that if, upon the experiment being tried—and it is a wholly tentative experiment—the bank circulation, or the Government note circulation, is to any extent encroached upon, then there will be very much less coining, after that fact becomes known, than before.

Hon. Sir MACKENZIE BOWELL—There is one point brought out to-night which I must confess I was ignorant of. The hon. gentleman (Mr. Forget) stated that if you go to the Receiver-General's office with a quantity of legal tender notes and demand the gold for it, you cannot get the gold. If that is the case, there is no redemption of those notes. I understand if you go to a bank with a thousand dollars, or ten thousand dollars, of their notes and demand gold, there are certain centres where they are obliged to redeem them in gold, but, from what has been stated, that does not apply to the office of the Receiver-General. I was always under the impression that he had to give you the gold for Dominion notes. My hon. friend says no, they will not. What will they offer you in return—another \$10,000?

Hon. Mr. MILLS—The Government do not redeem in that way. The only redemption of Government notes will be from the banks—no officer of the Government will undertake to redeem them.

Hon. Sir MACKENZIE BOWELL—What is the object of the Receiver-General's office then?

Hon. Mr. FORGET—If you have ten thousand dollars in Dominion notes, and you go to your bank and say: "I want gold for this." They say: "Yes, we will give you gold at a price." They will not give you gold at par. They say: "These are not our notes." They will pay gold for their own notes only. If I take the Dominion notes to the Receiver-General, he will not give me gold. I have tried it.

Hon. Mr. DANDURAND—What did he answer?

Hon. Mr. FORGET—He said, "Go to the bank." The Government is supposed to redeem its notes in gold, but it does not do so. For instance, if you take a bag of silver to the Receiver-General he will not take it.

Hon. Mr. BERNIER—Are we to understand that a man going with ten thousand dollars in Dominion notes to the Receiver-General, or to the bank, cannot get gold for it or has to pay a discount? If that is so, there is something wrong?

Hon. Mr. MILLS—No.

Hon. Mr. FORGET—It is explained in this way: these notes are circulated on the credit of the Government, and the Government keep a reserve in the treasury.

Hon. Mr. PERLEY—Then why do they not redeem their notes?

Hon. Mr. FORGET—They must keep ten or fifteen per cent. to meet their circulation. If two or three big bankers go to the Receiver-General's office to-morrow and ask them for a couple of million dollars, the Government would not have the gold to give.

Hon. Sir MACKENZIE BOWELL—As I have stated, when the bankers came to the Receiver-General and demanded large amounts of gold, we had to pay it, and the only way we stopped it was to bring in English gold, which is legal tender under our law, and that stopped the run. I never knew before that the Receiver-General could refuse to redeem Dominion notes in gold. I always supposed that if I went to the Receiver-General with Dominion notes I could get the gold.

Hon. Mr. BERNIER—I have never been a banker, and consequently cannot throw any light on the effect that this will have on the circulation or on trade of the country. My first impression was that Canada being a gold-producing country, it would be an advantage to the Dominion to have a mint. But here we are told by leading bankers of the Dominion that the creation of a mint would interfere seriously with the circulation of bank and Dominion notes, and although, from a sentimental point of view, we might afford the luxury of losing something from the establishment of a mint, it is a different matter to interfere with the banking business of the country and injure our money market or our trade relations. It is a very serious matter. The bankers have taken the trouble to warn us. Their remarks should be taken into very serious consideration.

Hon. Mr. DRUMMOND—I have nothing to add to what has been said except this: I should like to see the Government, in counting the cost of this, take into account, first, the expense of a mint, and, second, the amount of the interest they will lose, to the full extent of the point at which the new coinage will displace their circulation. You have to do that.

Hon. Mr. MILLS—Certainly.

Hon. Mr. DRUMMOND—Now that is something which cannot be determined, but when the hon. gentleman (Hon. Mr. Forget) seriously made that remark, I think his anticipations were correct, that at the start everyone would wish to have some of these new coins, and possibly the circulation might reach ten million dollars. The bulk of it would displace the present circulation, and you might count on losing three or four times the amount estimated in the Bill as being the annual deficit on account of the establishment of a mint.

Hon. Mr. MILLS—I have no doubt of what the hon. senator says in that regard. There are, in every community, a few people who hoard money. They do not put it in the bank. They feel that it is safer in their possession. It is earning nothing, but they are content to have it in their possession rather than to have it earning something. They do not want to lose control over it. They would prefer gold, for the purpose of

hoarding, to bank notes, and a certain portion of the gold coin put in circulation will be withdrawn from circulation by the hoarding.

Hon. Mr. FORGET—When it is taken out of circulation the interest on it is lost.

Hon. Mr. MILLS—Yes.

Hon. Mr. DANDURAND, from the committee, reported the Bill without amendment.

The Bill was then read the third time, on a division, and passed under a suspension of the rules.

QUESTIONS ON POINTS OF PRACTICAL INTEREST*

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee :

Note held as collateral allowed to run past due without notice to endorser

QUESTION 437.—Is a bank responsible for a note deposited with it as collateral if it (having an endorser) is allowed to run past due without the endorser being notified of dishonour, or allowed to become outlawed by no action being taken for six years ?

ANSWER.—As holder of the collateral security the bank is bound to exercise reasonable care in reference to it, and to the realization of it. Therefore if, by reason of its neglect to notify the endorser, or to get judgment on the note before it became outlawed, the debtor to the bank, or true owner of the note, suffered damage, the bank would be responsible. If the bank were willing to sue on the note before it became outlawed provided the debtor furnished the money required for costs, and if the debtor refused to do this the bank would not be bound to sue, but the debtor should be given an opportunity of protecting his interest in the note.

Sight draft left with drawee for 48 hours—date of acceptance

QUESTION 438.—Referring to question 399, will you kindly add an answer to the following supplementary question :

If the holder of a sight draft should voluntarily leave it with the drawee for 48 hours for acceptance, and the drawee date his

*For blank form for questions, see last page

acceptance on the last day on which he holds it, must the holder, in order to prevent the release of the drawer or previous endorsers, protest the draft?

ANSWER.—Yes; this would be a qualified acceptance, and should the drawee not make the necessary change of date the draft should be protested.

Note endorsed by B with waiver of protest paid by B at maturity, marked "paid" by holder, and afterwards re-circulated by B

QUESTION 439.—A makes note in favour of B. B endorses same and waives protest, etc. At maturity B has to pay note and the bank places their "paid" stamp on the back of the note over B's endorsement. B afterwards circulated the note apparently as cash, and eventually (three or four years after maturity) has been called upon to pay same but refuses. Is he still liable as endorser?

ANSWER.—The payment by B is not a payment of the note so as to extinguish all liability on it, and evidence would be admissible to show that the stamp "paid" meant paid or retired by the endorser only. If B himself, as the question states, afterwards negotiated the note, there could be no question that he would be liable as endorser, but the holder would of course take subject to the equities which might attach to the note as an overdue note when he became the holder. See section 36, sub-section 2, and section 37 of the Bills of Exchange Act.

Canadian Bankers' Association Clearing House Rules

QUESTION 440.—Should not the word *or* on sixth line of Clearing House Rule No. 14 be *on*.

Will you kindly give an illustration of the working of Rule 14. The first sentence contains 150 words, and its meaning is not as clear as it might be.

ANSWER.—(1) The word should be "on."

(2) The rule referred to deals with exceedingly complicated conditions, but its meaning is clear, and we doubt if it could be simplified very much. It is intended to cover a case where for any reason the banks which have balances against a defaulting bank prefer *not* to have their items returned, but to get the benefit of the balances due the defaulting bank by other banks, a right which under some circumstances might be very important. The phraseology is affected by the fact that the defaulting bank does not owe, or stand as a creditor of, the several banks in the Clearing House, but owes its debtor balance to the chairman of the Clearing House (Rule 11, clause 3). This is necessary in order that some person or body should have a legal claim.

Rules and conventions respecting endorsements

QUESTION 441.—A cheque is payable to the order of the "Metropolitan Polo Club" (an incorporated company). Would it be in order, under the Rules Respecting Endorsements, if it were endorsed simply "The Metropolitan Polo Club" with a stamp, or should the name of someone acting on behalf of the club be added? It has been said that the simple endorsement is sufficient under Article No. 1, but under the 3rd clause of Article No. 2 it is provided that where an endorsement purports to be that of a corporation the official position of the person or persons signing must be stated.

ANSWER.—An endorsement reading simply "The Metropolitan Polo Club" would, if put on with proper authority, be a valid endorsement apart from the rules, but the provision in Article No. 2 referred to was deliberately adopted as tending to protect banks from irregularities in the matter of endorsements, and such an endorsement would not be regular under the rules. The name of the officer may be written or stamped, but in order that the endorsement may be regular it is necessary that the name of the proper officer should be added.

The paying bank is entitled under the rules to a guarantee of an endorsement such as that quoted.

Powers of Quebec Municipalities to tax banks

QUESTION 442.—Has a town corporation in the province of Quebec power to levy a business tax on banks?

ANSWER.—We are advised that the Municipal Act of the Province of Quebec does not give town corporations power to impose a business tax on banks, and that if there is no reference to such a right in the town's charter authority would have to be obtained from the Legislature.

Cheque issued by treasurer of a municipality—Instructions to stop payment given by a councillor

QUESTION 443.—An account is passed by a town council and a cheque issued in regular form. Before presentation, the bank receives verbal instructions from one of the councillors to stop payment of the cheque, and, subsequently, similar instructions purporting to come from the town treasurer are received by telephone. On presentation of the cheque for payment, the treasurer is called up by telephone and denies having given any instructions regarding the cheque. Would not the bank incur liability for damages if payment were refused, there being sufficient funds at credit of the account?

ANSWER.—A municipal councillor has no authority to countermand payment of cheques issued by the treasurer of a municipality, and if his instructions were acted upon without reference to the treasurer it is possible that the bank would be liable in an action by the corporation for damages, although this liability would not be a serious matter if it could be shown that the bank had taken precautions to safeguard its customer's interests. Proper precaution would, we think, involve in the case instanced an immediate communication with the treasurer on receipt of the councillor's message, or, if this was not done, confirmation by letter of the telephone message purporting to come from the treasurer.

Certified cheque—Name of payee subsequently altered

QUESTION 444.—A cheque is presented to the drawee bank to be certified, and is drawn out by Jones payable to Smith & Robinson. Jones hands the cheque to another bank after being marked, to deal with, and afterwards requests to have it returned to alter the name of payee from Smith & Robinson to Mr. Smith. Is Jones acting within his rights to alter, and does the bank who holds cheque incur any responsibility in any way in allowing him to alter, and holding after the change. The firm Smith & Robinson presumably do not know anything about the cheque, but subsequently expect to receive payment in connection with an escrow.

ANSWER.—The alteration of the cheque after certification would warrant the drawee bank in repudiating the certification, but it is not clear that your question calls for an answer on this point.

As to the rights of the drawer to a return of the cheque from the bank with which it was lodged we are unable to answer your question without fuller information. We should suppose, however, from your statement of the matter that the cheque was lodged with the bank on the implication that it was the property of the depositor, but that the bank was authorized to deliver it to the payee if the latter should apply for it and comply with certain conditions. In such a case the drawer would be entitled to countermand his instructions. If on the other hand the cheque was lodged with the bank under circumstances implying a trusteeship on its part for all the parties and it might of course be answerable to the payees if the cheque were surrendered without their consent.

Notice of dishonour—makers of a note who are also endorsers

QUESTION 445.—Is it necessary to send notices of dishonour to the endorsers of a note on which they are also the promissors?

ANSWER.—They would be held as makers of the note without notice of dishonour. As no additional obligation is represented by the appearance of their name also as endorsers nothing would be gained by the notification, from a legal standpoint.

Mortgage security taken by a bank in pursuance of a promise made when the money was advanced

QUESTION 446.—A customer presents his note to a chartered bank for discount and offers to give at once a mortgage as security. He is told that it is not necessary now, but is asked to promise to give it in a few days later if judged necessary. On his answering "Yes" the note is discounted. He draws the proceeds or leaves them to his credit. Two or three days after he is asked to give the mortgage; he gives it.

Could the mortgage be successfully contested?

ANSWER.—We think that to discount a note on a promise that mortgage security will be given is equivalent to lending money on the security of the mortgage, and that the security would be void under the Bank Act.

Borrowing powers of Ontario Municipalities

QUESTION 447.—Which of the items in the appended abstract of expenditure of a township would be classed under the head of "ordinary current expenditure" for the purpose of determining the borrowing powers of the municipality, and what amount could the township legally borrow under these conditions?

ABSTRACT OF EXPENDITURE FROM 1ST JAN. TO 31ST DEC., 1900

| | |
|---|---------|
| Officers' salaries..... | \$1,000 |
| Stationery and printing..... | 100 |
| Roads and bridges..... | 1,500 |
| County rates..... | 1,200 |
| School purposes | 4,000 |
| Debentures redeemed | 2,000 |
| Loans and notes paid..... | 5,000 |
| Drainage account | 600 |
| Drains (for which debentures were sold) | 2,000 |
| Sundry items | 900 |

ANSWER.—There is no judicial decision on the question involved which gives any definition of the words "current expenditure." The word "ordinary" does not appear in sub-section 1 of section 435 of the Municipal Act by which the authority to borrow "to meet the then current expenditure of the corporation" is given. Sub-section 2 was added five years later, and limits the amount to be borrowed to "80 per cent. of the amount collected as taxes to pay the ordinary current

expenditure of the municipality in the preceding municipal year." The word "ordinary" is here introduced, and the effect seems to be that under sub-section 1 "current expenditure" would include all expenditure which the corporation has to meet during the year until the taxes levied therefor can be collected, no matter whether such expenditure is "ordinary" or not; whereas in calculating the amount which sub-section 2 authorizes, regard must be had to the actual results of the preceding year. The "ordinary" current expenditure of that year must be ascertained and also the amount actually collected as taxes to pay such ordinary current expenditure, and only 80 per cent. of this latter amount can be borrowed, no matter what the "current expenditure" of the current year may be. It is evident that no proper comprehensive definition of "ordinary current expenditure" can be given. Most of the items included in it would not be disputed by any one, and whether the dividing line is reached or overstepped would be a question to be determined on the facts of each case, and it would therefore serve no useful purpose for us to express an opinion upon what might be considered doubtful items, except to say that the maxim "when in doubt, don't" may well be followed here.

Conventions and rules respecting endorsements

QUESTION 448.—A cheque payable to order is endorsed by "mark" (properly witnessed). It is presented through the Clearing House bearing the usual stamped endorsement of the presenting bank. Is the endorsement regular, or should the presenting bank be asked to guarantee it?

ANSWER.—The endorsement is quite regular.

Money parcel receipted for by express agent in bank's own office

QUESTION 449.—If a parcel of money is receipted for by a local agent of an express company in a bank's own office would the express company be legally responsible for the loss if the money should be lost or stolen while being conveyed by the local agent from the bank to his own office? No special authority from the express company is held authorizing the local agent to call at the bank and receipt for such parcels.

ANSWER.—Without being advised of the extent of the local agent's authority and the regular course of dealing, knowledge of which could be brought home to the company, it is impossible to express an opinion as to the liability of the company under the circumstances stated in the question. If it was beyond the scope of the agent's authority the company is not liable. The answer to the question would depend upon the course of dealing

between the bank and the company and upon the real authority of the agent, or upon the authority which it might be held the company had held out as possessed by him.

Security under Section 74, Bank Act, on cattle at large on public range

QUESTION 450.—A, who is a wholesale dealer in live stock in the North West Territories, applies to a chartered bank for an advance. They take security upon his cattle running at large on the public range under Section 74 of the Bank Act, and do not register their lien. Some time after A applies to B, a private party, for a loan, offering his cattle as security, and stating they are clear. B makes a search in the registry office for the district and finding no registrations against A, advances him the amount, taking as security a chattel mortgage on the cattle, which is duly registered. According to chap. 43, sections 6 and 11 of the Consolidated Ordinances of the North West Territories, 1898, as follows:—

"6. Every mortgage or conveyance intended to operate as a mortgage of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, shall within thirty days from the execution thereof be registered as hereinafter provided, together with an affidavit of a witness thereto of the due execution of such mortgage or conveyance, and also with the affidavit of the mortgagee or one of several mortgagees or the agent of the mortgagee or mortgagees, if such agent is aware of all the circumstances connected therewith and is properly authorized by power in writing to take such mortgage, in which case a copy of such authority shall be attached thereto (save as hereinafter provided under section 21 hereof) such last mentioned affidavit stating that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that it was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him; and every such mortgage or conveyance shall operate or take effect upon from and after the day and time of the filing thereof.

"11. In case such mortgage or conveyance and affidavits are not registered as hereinbefore provided, or in case the consideration for which the same is made is not truly expressed therein, the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor and against subsequent purchasers or mortgagees in good faith for valuable consideration."

Who has best title to the cattle, the bank or B? Do not these provisions in the North West Territories Ordinances override Section 74 of the Bank Act?

ANSWER.—If the bank has taken security in the proper form under the Bank Act, and if the cattle can be sufficiently

identified as being those covered by the security, the claim of the bank will prevail over that of the mortgagee.

The validity of those sections of the Bank Act, which of necessity interfere with the laws of the provinces respecting the registration of bills of sale and chattel mortgages, has been determined by the Privy Council in England. See *Tennant v. Union Bank* (1895), Appeal Cases 31.

Joint and several note payable "within 30 days of demand of payment"

QUESTION 451.—Is there any legal objection to a note drawn in the following form :

Within 30 days after demand of payment for value received we jointly and severally promise to pay.....with interest at the rate of.....per cent. per annum from date until paid.

ANSWER.—No.

Legal

LEGAL DECISIONS AFFECTING BANKERS

HOUSE OF LORDS*

Great Western Railway Company v. London and County Banking Company†

A rate collector was in the habit of receiving from the plaintiffs and other ratepayers cheques for the amounts payable by them for rates, and he took the cheques to a branch of the defendants' bank and received cash in exchange therefor, though he had no account with the bank. The plaintiffs, upon the false statement that a rate had been made, paid him a cheque for £142 10s, crossed generally and marked "not negotiable," and he handed this cheque to the defendants' branch bank, who paid him the amount thereof and the defendants received payment of the cheque from the bank on which it was drawn. In an action for money had and received or damages for conversion of the cheque, it was found that the defendants received the payment in good faith and without negligence.

Held, that the rate collector was not a "customer" of the bank, that the bank had not received payment of the cheque for him, and that therefore the defendants were not protected by s. 82 of the Bills of Exchange Act, 1882; and that as the cheque was marked "not negotiable," the defendants had no title to it or to the moneys received by them as holders of it.

Decision of the Court of Appeal reversed.

This was an appeal from an order of the Court of Appeal dismissing the appeal of the appellants against a judgment of Mr. Justice Bigham. The important question was involved of what constitutes a "customer" of a bank within the meaning of section 82 of the Bills of Exchange Act, 1882, which provides that where a banker in good faith and without negligence receives payment "for a customer" of a cheque crossed generally or specially to himself, and the customer has no title or a defective title the banker shall not incur liability to the true owner.

*Earl of Halsbury, L.C., Lord Shand, Lord Davey, Lord Brampton and Lord Lindley.

†*The Times Law Reports*.

The action was commenced by the appellants as plaintiffs against the respondents to recover "the sum of £142 10s, money had and received to the use of the plaintiffs, or in the alternative for the wrongful conversion by the defendants of a cheque of the value of £142 10s." On November 16, 1898, one Noble Huggins, by falsely pretending that a poor rate had been made, and that he, as assistant overseer, was entitled to receive the same, obtained from the appellants a cheque of the value of £142 10s, with intent thereby to defraud. Of this misdemeanour he was duly convicted. The cheque was drawn in favour of Noble Huggins or order as payee on the London Joint Stock Bank, Prince's street, London, and was crossed "and Co.," and bore on it the words "not negotiable." Huggins on November 16, 1898, offered the said cheque for cash to the branch bank of the respondent company at Wantage, in the county of Berks, who took the same and gave him the sum of £117 10s in notes and gold. The balance, £25, was not paid in cash to Huggins, but was held by the manager of the respondent's said branch bank, in his capacity as treasurer of the Wantage Rural District Council, at the request of Huggins, in discharge of his liability to the Council. The cheque was presented by the respondents on November 17, 1898, at the London Joint Stock Bank, and payment was made on behalf of the appellants. Upon the discovery of the fraud the appellants demanded the proceeds of the cheque, and after refusal commenced this action. Huggins never had any banking account with the respondent company. It appeared, however, that he had during many years previously taken cheques received by him from various ratepayers to the respondent's branch bank at Wantage and received cash in exchange therefor. The appellants, in fact, had no knowledge of these transaction, nor was there any evidence that they had such knowledge. In their defence the respondents alleged that Huggins was a customer of theirs. They also alleged that they gave value for the cheque in good faith and without negligence, and without notice that Huggins had a defective title to it. It was contended by the appellants that Noble Huggins was not (so far as regards this transaction, nor at all) a customer of the respondents within section 82 of the Bills of Exchange Act, 1882, and even if he was a customer, that the respondents did not receive

payment of the cheque for a customer within the section, but that the appellants' money was obtained in payment of the cheque by the respondents for themselves as holders of the cheque, for which they had given value to a person who was not capable of giving a better title than he had himself. The action was tried before Mr. Justice Bigham, without a jury, when the learned Judge gave judgment for the respondents, with costs, upon the ground that they received payment of the cheque in good faith and without negligence, and that they so received payment for Huggins and not for themselves, and that as Huggins was a "customer" of the bank within the meaning of section 82 of the Bills of Exchange Act, 1882, the respondents were protected by that section. The Court of Appeal (Vaughan Williams, L.J., doubting), confirmed the judgment of Mr. Justice Bigham.

The LORD CHANCELLOR.—The importance of this case depends upon the true construction of the 81st and 82nd sections of the Bills of Exchange Act, 1882. I think there are more reasons than one for the opinion I entertain. But the section to which I referred is of such wide and general importance that I prefer to rest my judgment upon that. I think it is very important that everyone should know that people who take a cheque which is marked "not negotiable" and treat it as a negotiable security must recognize the fact that if they do so they take the risk of the person for whom they negotiate it having no title to it; and in this case it cannot be pretended that Huggins had any title to it at all. I do not understand what additional security is supposed to be given to a cheque by putting the words "not negotiable" upon it, if the fact of its being negotiated can give a title to any one. The supposed distinction between the title to the cheque itself and the title to the money obtained by it seems to me to be absolutely illusory. The language of the statute, which seems to be clear enough, would be absolutely defeated by holding that a fraudulent holder of the cheque could give a title either to the cheque or to the money. The 82nd section, which contemplates the receipt of such cheque in the ordinary course of business for a customer of a bank, seems to me to contemplate a totally different class of transaction from what is disclosed in this case. The bank thought proper to take this cheque as representing its face value, and if he had no title, as he certainly had not, there is nothing in the 82nd section which will entitle them to treat it as a receiving payment for a customer. It is not

true to say that the banker is here sought to be made liable by reason of his having received payment for a customer. I do not think that Huggins was a customer of the bank at all within the meaning of the section; but what the bank are really insisting upon here is the valid negotiability of a cheque which was fraudulently obtained. Though it is enacted by the statute that, by reason of the words "not negotiable" upon the cheque, the holder shall give no better title to the cheque than that which the person from whom he took it had, nevertheless the bank contend that he can give a title to them which shall enable them to sue. As I have said, I do not think Huggins was a customer at all. I do not think the transaction was a banking transaction, and although I think there is another and a distinct ground which would defeat the bank's claim, I am content to rest my judgment upon the true construction of the statute.

LORD DAVEY read a judgment of Lord Shand to the same effect, and also a concurring judgment of his own.

LORD BRAMPTON.—Although I am of opinion that the evidence in this case would have justified the conviction of Huggins for larceny under section 88 of 24 and 25 Vict., c. 96, still, as the jury by their verdict in fact found him guilty of obtaining the cheque by false pretences, that is, of a misdemeanour and not of a felony, and as throughout the trial of this action the case was so treated, both by the appellants and the respondents, I have thought it right so to treat it in considering the question of the respondents' liability now before your Lordships. I do not, however, look upon this distinction as at all material, for the question before this House is not whether the respondents, when they received the cheque from Huggins, became the holders in due course in the sense that they were *bona fide* holders for value without notice of the fraud, nor whether they continued to be so until after the cheque was honoured by the appellants' bankers, upon whom it was drawn—for nobody impeaches the absolute integrity of the respondents, their officers, and clerks—but whether, in taking this cheque with the words "not negotiable," added to the general crossing "— and Co.," written upon the face of it by the secretary of the appellants before it was sent to Huggins, the respondents' right to receive payment of it was affected by section 81 of the Bills of Exchange Act, 1882, and was not within the protection of section 82. I deal first with section 81, which enacts "Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had." The object of this section is obvious.

It is to afford to the drawer or the holder (section 77) of a cheque who is desirous of transmitting it to another person as much protection as can be reasonably afforded to it against dishonesty or accidental miscarriage in the course of its transit, if he will only take the precaution to cross it, with the addition of the words "not negotiable," so as to make it difficult to get such cheque so crossed cashed until it reaches its destination. To apply that section to the present case, I cannot imagine that anybody would entertain a doubt that a person who obtains from another, by a fraudulently false pretence, a cheque so crossed with the intent to appropriate the proceeds to his own use, as Huggins did, could make any real title to such cheque; practically it would be the same as if he had stolen it. Having no title himself he had none to give to anybody else, and if this had been the case of an obliging tradesman cashing a cheque for a friend it would have been unarguable. But it is said the respondents, being bankers, are protected from liability to pay over to the appellants the moneys they have received by the honouring of the cheque, by section 82, which enacts that "where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally, or specially to himself, and the customer has no title, or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment." That the respondents in good faith received payment for the cheque is beyond question. I am not, however, quite so sure that it was altogether without negligence, for I must assume the manager at Wantage knew the meaning and legal effect of the crossing, with the words "not negotiable." This point, however, does not appear to have been raised, and certainly there was no finding upon it at the trial. I will reject it therefore for present purposes. The only remaining question is whether the money received by the respondents' bank when the cheque was honoured, was so received for any customer of the bank. I cannot come to the conclusion that it was. Nor do I think the evidence would justify such a finding. Huggins had no banking account at all anywhere. It is not necessary to say that the keeping of an ordinary banking account is essential to constitute a person a customer of a bank, for if it were shown that cheques were habitually lodged with a bank for presentation on behalf of the persons lodging them, and that when honoured the amount was credited and paid out to such person, whether with or without any profit to the bank for so presenting them, I would not say that such transactions might not constitute such person a customer within the meaning of the 82nd section; indeed, I think they would. But as between Huggins and the Wantage branch of the respondents' bank, the transactions

amounted to nothing of the sort. It is true that for many years the branch bank manager had been in the habit of accommodating Huggins by cashing cheques made payable to him, some crossed and some not crossed; but none marked "not negotiable." All the cheques were cashed across the counter before presentation. Sometimes a portion of the amount was paid by Huggins' direction in to the credit of the account kept with the bank by the Wantage Rural District Council, but there was never a cheque so changed without Huggins getting some cash out of it, and upon no occasion was a cheque paid in to the credit of the Wantage account above mentioned for presentation on their account; and I can well understand why it was so, because once paid in it could not have been got out without a cheque of the Wantage Rural District Council. I should further observe that the language of the 82nd section is where a banker "receives payment for a customer." In the case before your Lordships, on every occasion of cheques so cashed, the money had already been given to Huggins in exchange for the cheque; the money paid to the respondents has been received on their own account to reimburse them, and not on account of Huggins at all. For these reasons I think the transaction between Huggins and the respondents is not within the protection of the 82nd section, and that as Huggins could give the respondents no better title than he had himself, the appellants are entitled to your Lordships' judgment, and that this appeal should be allowed with costs.

LORD LINDLEY.—In the view I take of this case it is unnecessary to determine whether Huggins was guilty of larceny in stealing the cheque, or whether he only obtained it by false pretences, which is the crime of which he was convicted. Whether the cheque was void, or only voidable as contended by Mr. Lawrence appears to me really immaterial. Be it void or be it voidable, it was not negotiable, and by section 81 of the Bills of Exchange Act, 1882, Huggins had not and was not capable of giving a better title to the cheque than he had himself. But it is said that, although the bank had a defective title to the cheque, they have a good title to the money paid to them as holders of it. My Lords, so to construe the section would destroy more than half its utility. A cheque marked "not negotiable" would be no safer than any other cheque if once cashed—i.e., unless payment of it was stopped before it was presented. I cannot think this an admissible construction; it has never yet been judicially adopted, and I advise your Lordships to reject it. Every one who takes a cheque marked "not negotiable" takes it at his own risk, and his title to the money got by its means is as defective as his title to the cheque itself. *Fisher v. Roberts* is an authority to this effect, and section 82 seems to me framed on the assumption that this view is correct. The

section would not otherwise be wanted. Upon the other point, it is plain to me that the bank obtained payment of the cheque for themselves and not for Huggins. Whether the bank is to be regarded as having purchased the cheque, or as having advanced him its amount on the security of it, seems to me immaterial. The bank wanted the money for themselves and not for him. They were entitled to hold the money as against him, and were under no obligation to remit it to him. In no ordinary sense of the expression can the bank be regarded as collecting the money for him, although, no doubt if the bank could keep the money all liability on his part would be at an end, and in that way he would be benefited by their receipt of the money. Section 82 of the Act is a mere reproduction of the previous Act of 1876, and the construction put upon that Act in the case of *Matthiesson v. London and County Bank* was, in my opinion, correct. In *Clarke v. London and County Banking Company* the cheque was paid in for collection, and this was the *ratio decidendi*. Further, my Lords, I cannot think that Huggins was in any sense a customer of the bank; no doubt he was known at the bank as a person accustomed to come and get cheques cashed, but he had no account of any sort with the bank. Nothing was put to his debit or credit in any book or paper kept by the bank. The entry in the waste book, page 20, is only a memorandum of the transaction. Lord Justice Romer thought he was a customer because the bank had for years collected money for him; but, in my view, the bank collected money for themselves, not for him, in this particular transaction, and the evidence only shows that previous transactions were similar to this. The case suggested by Lord Justice Romer of a customer paying in a non-negotiable cheque to his own credit when his account is overdrawn appears to me very different from that which is before your Lordships for decision. My Lords, the reasoning of Lord Justice Vaughan Williams commends itself to my mind, and although out of deference to his colleagues he accepted a view which he would not otherwise have entertained, I am clearly of opinion that the judgments appealed from should be reversed, and that judgment should be entered for the plaintiffs with costs, and that they should have the costs of this appeal.

The appeal was accordingly allowed.

KING'S BENCH DIVISION, ENGLAND.*

Watkin Brothers (Limited) v. Lamb and Robertson.

This was an action to recover damages for the wrongful conversion of four bills of exchange and for the amounts received by the defendants in respect thereof.

The plaintiffs pleaded that, on September 15, 1899, they handed to Robertson ten duly stamped bill forms signed by them as acceptors, but without dates or names of drawers, on the express understanding that, when Robertson should give cash for the bills, he might fill in his own name as drawer and date the bills for that day; that Robertson never gave any cash or consideration for the bills; that on September 25, 1899, the authority was revoked and the return of the bills demanded; that only five of the bills were returned; that Robertson fraudulently procured the defendant Lamb to insert his name as drawer of two of the remaining bills; that the defendant Lamb did so and dated the bills, with knowledge of the facts, and the defendants together negotiated them and received their face value; that Robertson also handed another of the bills to Lamb; and that they together handed the bill to one Dobson for £100, and either completed the bill themselves or induced Dobson to do so, by adding date and name of Dobson as drawer; that Robertson further fraudulently procured Lamb to insert his name as drawer of another of the bills, and Lamb completed the bill as one for £97 16s. 4d. The plaintiffs claimed £298 10s. 6d. on the first two of these bills, £100 on the third, and £97 16s. 4d., on the return of the bill, in the fourth case. The defendant Lamb denied that he had dated the bills in any case, and pleaded that, as to the first two bills, he had inserted his name as drawer and endorsed them to two persons named Jowler and Anderson in good faith and without any knowledge of the alleged facts. In the case of the third bill, he also denied fraud, and pleaded that Dobson had recovered the amount of the bill from the plaintiffs. With regard to the fourth bill, he pleaded his good faith and that the plaintiffs, by handing to Robertson the duly-stamped bill form signed by them, as acceptors, had given him *prima facie* authority to fill it up as a complete bill for any amount the stamp would cover, and he

*The Times Law Reports.

counter-claimed the sum of £98 16s. 4d. and interest as holder in due course of the bill. The charges of fraud against Lamb were (as the learned Judge states in his judgment) not proved, and were abandoned by the plaintiffs' counsel at the trial. The details of the case appear sufficiently in the judgment. At the hearing the following questions were left to, and answers given by, the jury: (1) Had Robertson authority to deal with the incomplete bills otherwise than for the purposes of raising money for the plaintiffs? Answer.—No. (2) Did the plaintiffs either authorize Robertson or enable him to hold himself out as authorized to deal with the acceptances as he did? Answer.—No. (3) Did the defendant act honestly and in good faith and without negligence in dealing with the documents? Answer.—In good faith, but with negligence. (4) If Robertson had not authority, had Lamb either notice or knowledge of the want of authority of Robertson to act as he did? Answer.—No. (5) Did the defendant in the case of each document give valuable consideration and get the right to fill in his name as drawer? Answer.—Yes.

On these findings of the jury, his Lordship reserved judgment.

MR. JUSTICE KENNEDY (on August 12) delivered the following judgment:—The plaintiff company carries on the business of timber merchants at Withington and Leighton Buzzard, and by their manager Frederick Watkin, on September 15, 1899, entered into a written agreement with the defendant Robertson, after a correspondence which commenced in July, and after certain interviews at Robertson's house, the object of the company being to raise capital by borrowing money on acceptances. The defendant Robertson absconded at some date in November, and the plaintiffs have been unable to find him and were unable to serve him with the writ in the present action. At a meeting with Frederick Watkin on September 15, 1899, he produced ten stamped bill of exchange forms, and persuaded Watkin to give the company's acceptance to each, after filling in sums of money amounting in all to £1,363 8s. 10d. In regard to dates and drawer's names the documents were left blank. At first, as I understand Watkin's evidence, he demurred to giving any of the acceptances except in exchange for cash. Ultimately he gave them to Robertson upon his promise to send the cash on or before the following Tuesday, and upon receiving his cheque for £1,000 post-dated to the 19th inst. This cheque, however, was not to be presented for payment. Watkin seems to have been foolish enough to treat it as some sort of security or guarantee.

The parties at the same interview signed a written agreement which was put in and which is as follows:—"We, the undersigned, have this day entered into a joint arrangement for mutual accommodation in connection with acceptances to be kept regularly renewed for a period of three years. The rate of interest to be charged by the said J. Robertson is not to exceed 5 per cent. per annum, no charge for brokerage or commission. Drawers to be provided by the said J. Robertson. It is understood that the undersigned are respective principals and not agents in this agreement. (Signed) J. Robertson, Watkin and Brothers (Limited). F. Watkin, managing director. This transaction is to gradually amount to a sum of £5,000. J.R., F.W."

I think that Robertson was to be entitled, but only for the purpose of making or recouping himself for advances to the plaintiffs, to fill in the dates and in regard to the drawer's names to complete the bills as negotiable instruments, by either himself filling in his own name as drawer or finding the persons who would insert theirs. Robertson, I have no doubt, never intended to carry out any such agreement, so far as making advances to the plaintiffs is concerned, but meant from the first to use the acceptances, as he afterwards did, for his own purposes. On September 19 or a day or two after—Watkin seemed to think it was the 19th—as no money had been sent, Watkin wrote to Robertson and said he must have the bills back. Robertson said the bills for the moment were with a friend of his, but that he would get them returned to the plaintiffs. On September 20, according to the defendant Lamb, Robertson sent him by letter the four bills which form the subject of this action. All four were then dated. Lamb completed three of the bills by the insertion of his own name as drawer, and the fourth bill was completed in a similar way, through Lamb, by one Dobson. As I understand the facts, the first two bills were endorsed by Lamb to holders for value of the names of Towler and Anderson, both of whom have been paid by the plaintiffs. They have also paid Dobson the amount of the bill in which he had inserted his name as drawer. The remaining bill was discounted by Lamb with his bankers, and upon its dishonour he has repaid the bankers and taken back the bill. As the jury have found that the defendant Lamb acted in good faith and had not either knowledge or notice of any impropriety or want of authority on Robertson's part in dealing with the bills as he did, and gave valuable consideration for the instruments, it is, I think, useless to refer particularly to any of the correspondence between Robertson and Lamb which relates to the transactions between them in regard to these four bills. On September 25 the plaintiffs still being without any remittance from Robertson wrote to him. On November 29 they received by post in a letter bearing the Leeds post-mark

without any address or other indication of the sender's whereabouts five of the ten acceptances in the same state in which Robertson had taken them. "We supposed," says Watkin, "that the other five had been destroyed." The next thing which the plaintiffs heard of the bills was a letter from the defendant Lamb of December 27, 1899. Before that time, as I have already mentioned, Robertson had absconded. Upon this state of facts the plaintiffs claim to recover damages from Lamb to the amount of the sums paid to Towler, Anderson, and Dobson, £398 10s. 6d., and the return of the fourth bill, of which Lamb is now the holder, or payment of the amount of it—viz., £97 16s. 4d. The claim is framed as a claim for the wrongful conversion of the acceptances. In the statement of claim there were charges of fraud against the defendant Lamb, but they were not proved, and, I think I may say, abandoned by the plaintiffs' council at the trial, and the jury, as I have already stated, have expressly found that he acted as he did in good faith and without notice of any improper conduct on the part of Robertson. The question therefore really is as to which of two parties who were both morally innocent ought, according to the law, to suffer for Robertson's dishonesty. The jury, to whom I left specific questions, have found in the first place that Robertson had not authority to deal with the incomplete bills otherwise than for the purpose of raising money for the plaintiffs. They have found further that the plaintiffs not only never authorized Robertson to hold himself out as authorized to deal with the documents as he did, but that the plaintiffs never enabled Robertson to hold himself out to the defendant Lamb as being authorized so to deal with them. They have also found that Lamb, whilst he acted in good faith in dealing with the documents as he did, acted with negligence. I interpret these last two findings of the jury to mean that in their opinion no business man is entitled to assume, if he is offered, not by the acceptors, but by some third party, an acceptance without a drawer's name, that the third party is authorized by the acceptors to give it to him to fill in his own name as drawer and negotiate the instrument, and therefore that the defendant Lamb, though honest, was negligent in taking these acceptances from Robertson and dealing with them as he did without satisfying himself properly as to Robertson's authority, and that the plaintiffs, whilst of course Robertson could not have done what he did unless they had given him the acceptances and left them with him for a time, cannot truly be said thereby to have enabled Robertson to hold himself out to the defendant as having the authority, because Lamb, if he had been a reasonably careful man of business, would never have inferred the authority from the mere fact of Robertson being in possession of the acceptances. If the defendant Lamb had inquired, if he had

either asked the plaintiffs directly as to Robertson's authority or insisted upon having from Robertson proof of his authority, he would up to September 19 or about that date have discovered that it was limited. There is, indeed, an authority to procure a drawer's name, but that authority only sanctioned the insertion of the name of a drawer who would discount the bills for the plaintiffs' benefit; and after September 19 he would have discovered that even that authority had been revoked orally, the revocation being afterwards repeated by the letter of September 25. After careful consideration I find myself unable to say that these two findings of the jury cannot be justified upon the evidence by this reasoning, and I am not at liberty to disregard them. They dispose of any possible defence of estoppel by means of the plaintiffs' conduct. We have then to consider the legal aspects of the case upon the findings of the jury so understood. Apart from any special consideration arising from the insertion in this agreement of the clause "drawers to be provided by the said J. R.," the law as to the rights of a person in the position of the defendant Lamb appears clear enough. He is not protected by any section of the Bills of Exchange Act, 1882, for he has taken that which was not a bill of exchange, but an imperfect and incomplete document, and in taking that his position is that described by his Honour Judge Willis at page 112 of his recent work on the Law of Negotiable Securities:—"If a person, however honestly, takes a piece of paper on which an acceptor's name appears, but no drawer's name, then, according to the authorities as I read them, he runs the risk of the person who gives him the instrument not having authority to allow a drawer's name to be put to the instrument." The authorities referred to by the learned author are *Baxendale v. Bennett* (3 Q.B.D., 525) and *Hogarth v. Latham* (*ib.*, 643). To them may be added the judgment of Lord Selborne in delivering the joint judgment of the Court of Appeal (Lord Selborne, L.C., and Lords Justices Cotton and Lindley) in *France v. Clark* (26 Ch.D., 262). Does the clause of the agreement, "drawers to be provided by the said J. R.," make an essential difference upon the facts of this case? I have felt some difficulty on this point, but on the whole I feel obliged to hold that it does not. The agreement must be read as a whole, and the consent or authority this gives is a consent or authority qualified and limited by the context. As I understand the written agreement, and as Watkin swears was in effect decided at the reported interview, the only drawer Robertson was authorized to provide was a drawer who would take the acceptance for the purpose of discounting it for the plaintiffs' benefit, but not a drawer who was to use the proceeds of the bills, for his own business or profit. The transaction is one for "mutual accommodation," and Robertson is to charge

interest not to exceed 5 per cent. for the advances. Lamb never saw the agreement, he never inquired if any agreement existed, its existence never affected his action. Robertson for his part knew that he was doing what under the agreement he had no authority to do, and was, in truth, fraudulently misusing the documents. Further, before any of the bills were completed by Lamb and before he had given Robertson any consideration for them, as I understand his answers to interrogatories, the original authority of Watkin, whatever that amounted to, had been revoked. It seems to me to follow, not only that Lamb himself could never sue the acceptors upon the instruments which he thus completed as bills without authority, but that, in dealing with them as he did, he was guilty towards the acceptors of an actionable wrong. The damage which resulted is the amount which necessarily fell upon the acceptors owing to his so dealing. I feel obliged, therefore, to hold that the plaintiffs are entitled in regard to the acceptances which they were obliged to meet, those in the hands of Towler and Anderson, to recover from the defendant what they paid—viz., £288 10s. 6d.; and, further, in regard to the acceptance now in the hands of the defendant, to have it delivered up to them. The Dobson bill for £100, if I may so call it, appears to me to stand in a different position. Dobson inserted his own name as drawer; he took the document as inchoate and incomplete, and the plaintiffs, as I understand the facts, had as good an answer to any claim of Dobson as they would have had to any claim of Lamb, if he had held and sued upon the acceptance to which he put his own name as drawer. As regards the Dobson bill, therefore, if the plaintiffs paid, they paid where they need not have done so, and cannot include the payment in the damages recoverable against the defendant.

Judgment was entered accordingly for the plaintiffs.

On the application of Mr. Ashton, a stay of execution was granted.

STATEMENT OF BANKS acting under Dominion Government charter for the months of June,
July and August, 1901, and comparison with August, 1900:

LIABILITIES

| | 29th June, 1901 | 31st July, 1901 | 31st Aug., 1901 | 31st Aug., 1900 |
|---|--------------------|--------------------|--------------------|--------------------|
| Capital authorized | \$ 74,875,332 | \$ 75,875,332 | \$ 75,875,332 | \$82,358,664 |
| Capital paid up | 67,095,718 | 67,147,091 | 67,482,864 | 65,368,255 |
| Reserve Fund | 36,437,736 | 36,461,608 | 36,787,828 | 33,245,018 |
| <hr/> | | | | |
| Notes in circulation | \$ 49,119,479 | \$ 48,947,978 | \$51,352,309 | \$ 47,421,277 |
| Dominion and Provincial Government deposits .. | 6,517,088 | 6,418,592 | 5,687,761 | 5,603,362 |
| Public deposits on demand in Canada | 92,897,813 | 95,548,323 | 93,945,799 | 100,738,575 |
| Public deposits after notice | 222,877,616 | 226,298,537 | 228,174,258 | 183,007,679 |
| Deposits elsewhere than in Canada | 21,638,289 | 29,956,580 | 29,788,014 | 16,429,516 |
| Loans from other banks in Canada, secured, including bills rediscounted | 1,415,336 | 600,272 | 656,062 | 1,337,916 |
| Deposits from and balances due other banks | 2,539,758 | 2,965,130 | 3,129,569 | 3,384,578 |
| Due to agencies of the bank and to other banks in United Kingdom | 6,906,088 | 6,477,756 | 6,569,418 | 5,713,769 |
| Due to agencies of the bank and to other banks else- where than in Canada and the United Kingdom | 2,855,151 | 752,114 | 803,096 | 569,873 |
| Other liabilities | 10,554,072 | 11,340,649 | 11,360,226 | 6,965,301 |
| <hr/> | | | | |
| Total liabilities | \$417,320,761 | \$429,306,012 | \$431,466,589 | \$371,171,916 |

ASSETS

| | | | | |
|--|---------------|---------------|---------------|---------------|
| Specie..... | \$11,695,053 | \$11,654,085 | \$11,537,097 | \$11,080,742 |
| Dominion notes..... | 19,088,896 | 20,774,171 | 20,016,696 | 18,243,566 |
| Deposits to secure note circulation..... | 2,442,124 | 2,568,918 | 2,568,918 | 2,372,973 |
| Notes and cheques on other banks..... | 11,880,928 | 12,404,931 | 11,016,915 | 9,947,178 |
| Loans to other banks in Canada secured, including bills rediscounted..... | | | | |
| Due by other banks in Canada..... | 1,360,911 | 545,272 | 601,062 | 1,295,152 |
| Due from agencies of the bank and from other banks in United Kingdom..... | 3,808,555 | 4,070,626 | 4,146,678 | 4,253,174 |
| Due from agencies and from other banks elsewhere than in Canada and the United Kingdom..... | 4,440,719 | 5,536,348 | 6,004,717 | 6,014,776 |
| Dominion and Provincial Government securities .. Canadian municipal securities, and British or foreign or colonial public securities other than Canadian Railway and other bonds, debentures and stocks .. | 11,466,617 | 16,276,435 | 19,832,953 | 12,374,707 |
| Call and short loans on stocks and bonds in Canada .. | 12,318,007 | 11,505,328 | 11,469,877 | 11,182,752 |
| Call and short loans elsewhere than in Canada.... | | | | |
| Current loans in Canada..... | 13,037,085 | 13,950,854 | 13,669,442 | 10,887,664 |
| Current loans elsewhere than in Canada .. | 31,618,845 | 31,859,413 | 32,209,820 | 24,210,972 |
| Loans to Dominion and Provincial Governments.. | 33,573,539 | 35,173,927 | 36,999,603 | 30,028,215 |
| Overdue debts | 41,199,281 | 40,835,163 | 42,343,373 | 27,771,191 |
| Real estate..... | 282,872,134 | 282,547,157 | 280,758,805 | 272,012,320 |
| Mortgages on real estate sold | 23,226,982 | 26,268,826 | 27,373,521 | 14,885,183 |
| Bank premises | 3,167,483 | 2,599,390 | 2,082,121 | 1,501,760 |
| Other assets | 1,794,876 | 1,957,892 | 2,110,695 | 1,988,004 |
| | 907,985 | 907,672 | 915,995 | 991,911 |
| | 650,372 | 664,579 | 671,789 | 575,919 |
| | 6,541,498 | 6,574,795 | 6,599,683 | 6,335,039 |
| | 11,232,048 | 12,832,475 | 11,217,955 | 8,174,399 |
| Total assets | \$528,304,110 | \$541,508,426 | \$544,147,899 | \$476,127,784 |
| Loans to directors or their firms | \$11,852,421 | \$12,755,431 | \$12,632,370 | \$11,744,413 |
| Average amount of specie held during the month.. | 11,869,498 | 11,705,010 | 11,745,203 | 11,002,953 |
| Average Dominion notes held during the month .. | 19,170,742 | 19,567,752 | 20,035,361 | 17,697,548 |
| Greatest amount of notes in circulation during month | 49,630,106 | 50,762,456 | 51,748,208 | 48,242,681 |

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

| <i>Year ended 30th June—</i> | | 1900 | 1901 |
|------------------------------|--|------------------|------------------|
| Free | | \$ 68,453 | \$ 71,729 |
| Dutiable | | 104,200 | 105,958 |
| | | <u>\$172,653</u> | <u>\$177,687</u> |
| Bullion and coin | | 8,298 | 3,537 |
| | | <u>\$180,951</u> | <u>\$181,224</u> |

EXPORTS

| <i>For the year ended 30th June—</i> | | 1900 | 1901 |
|--------------------------------------|------------------|------------------|------|
| Products of the mine | \$14,106 | \$ 39,982 | |
| " Fisheries | 11,303 | 10,720 | |
| " Forest | 30,050 | 30,003 | |
| Animals and their produce | 55,898 | 55,499 | |
| Agricultural produce | 27,429 | 24,977 | |
| Manufactures | 13,693 | 16,012 | |
| Miscellaneous | 339 | 44 | |
| | <u>\$152,819</u> | <u>\$177,241</u> | |
| Bullion and Coin | 8,641 | 2,376 | |
| | <u>\$161,460</u> | <u>\$179,617</u> | |

SUMMARY (in dollars)

| <i>For the year ended 30th June—</i> | | 1900 | 1901 |
|--|---------------|---------------|------------------|
| Total imports, other than bullion and coin.. | \$172,653,000 | \$177,687,000 | |
| Total exports, other than bullion and coin.. | 152,819,000 | 177,241,000 | |
| Excess | (Imp.) | \$19,834,000 | \$446,000 |
| Bullion and coin, net excess | (Exp.) | 343,000 | (Imp.) 1,161,000 |

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(000 omitted)

| | MONTREAL | | TORONTO | | HALIFAX | | HAMILTON | |
|------------|----------|---------|---------|---------|---------|---------|----------|---------|
| | 1899-00 | 1900-01 | 1899-00 | 1900-01 | 1899-00 | 1900-01 | 1899-00 | 1900-01 |
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| September | 64,163 | 57,686 | 39,842 | 38,933 | 5,937 | 6,351 | 3,590 | 3,176 |
| October .. | 69,792 | 65,983 | 46,979 | 47,246 | 6,795 | 6,920 | 3,608 | 3,642 |
| November | 71,101 | 68,656 | 44,637 | 47,550 | 6,645 | 6,921 | 3,680 | 3,481 |
| December | 68,979 | 63,311 | 47,011 | 48,325 | 6,744 | 6,946 | 3,730 | 3,842 |
| January .. | 62,853 | 71,115 | 45,114 | 54,299 | 6,707 | 7,359 | 3,742 | 3,684 |
| February | 54,250 | 51,138 | 37,864 | 41,946 | 5,354 | 6,116 | 3,040 | 2,922 |
| March ... | 54,882 | 69,580 | 40,581 | 50,062 | 5,868 | 6,191 | 3,171 | 3,398 |
| April | 55,915 | 69,132 | 38,842 | 49,079 | 6,004 | 6,923 | 3,099 | 3,519 |
| May | 62,332 | 84,507 | 43,215 | 55,608 | 5,984 | 6,549 | 3,493 | 4,031 |
| June | 63,543 | 79,746 | 44,545 | 50,697 | 6,187 | 7,047 | 3,342 | 3,112 |
| July | 61,293 | 80,198 | 44,400 | 52,867 | 7,184 | 8,618 | 3,194 | 3,555 |
| August .. | 58,229 | 71,723 | 37,075 | 49,253 | 7,162 | 8,421 | 3,035 | 3,149 |
| | 749,332 | 832,775 | 510,105 | 585,865 | 76,571 | 84,362 | 40,724 | 41,511 |

| | WINNIPEG | | ST. JOHN | | VANCOUVER | VICTORIA |
|------------|----------|---------|----------|---------|-----------|----------|
| | 1899-00 | 1900-01 | 1899-00 | 1900-01 | 1900-01 | 1900-01 |
| | \$ | \$ | \$ | \$ | \$ | \$ |
| September | 8,281 | 7,320 | 3,004 | 3,340 | 4,301 | 2,639 |
| October .. | 12,689 | 9,183 | 2,814 | 3,362 | 4,956 | 3,070 |
| November | 14,435 | 11,618 | 2,903 | 3,115 | 4,008 | 3,151 |
| December | 12,966 | 10,869 | 2,963 | 3,213 | 3,686 | 2,443 |
| January .. | 9,906 | 9,623 | 3,033 | 3,092 | 3,369 | 3,257 |
| February | 6,702 | 7,158 | 2,342 | 2,742 | 2,674 | 2,181 |
| March ... | 7,320 | 7,839 | 2,509 | 2,860 | 3,196 | 2,243 |
| April | 7,091 | 7,634 | 2,492 | 3,060 | 3,511 | 2,570 |
| May | 9,762 | 8,681 | 2,945 | 3,341 | 3,673 | 2,962 |
| June | 9,612 | 8,547 | 2,978 | 3,364 | 4,058 | 2,746 |
| July | 9,395 | 9,213 | 3,468 | 3,890 | 4,610 | 2,806 |
| August ... | 8,173 | 9,324 | 3,561 | 3,805 | 4,498 | 2,441 |
| | 116,332 | 107,009 | 35,012 | 39,184 | 46,540 | 32,509 |

QUESTIONS ON POINTS OF PRACTICAL INTEREST

FORM FOR QUESTIONS

The Editing Committee

Journal of the Canadian Bankers' Association, Toronto.

Please give your opinion on the following point by mail*
in the next issue of the Journal

Question :

If the question does
not call for an answer
by mail, the enquirer's
name need not be given
if he so prefers.

*If answer is desired by mail, stamp should be enclosed.



JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

JANUARY—1902

THE HISTORY OF CANADIAN CURRENCY, BANKING AND EXCHANGE

VIII. CRISIS AND RESUMPTION*

WHEN the suspension of the banks of the eastern States and Lower Canada took place, it was the conviction of the leading merchants and bankers of Upper Canada that suspension should take place there also. But the Lieut. Governor Sir F. B. Head, would not hear of it. His attitude on the subject was apparently determined, in large measure, by his intense hatred of everything American, and his consequent aversion to following

*Chief sources :

Journals of the Assembly, Upper Canada.

Statutes of Upper Canada.

Journals of the Special Council, Lower Canada.

Ordinances of the Governor General and Special Council, Lower Canada.

British Blue Books relating to Canada, 1837-39.

A Narrative. By Sir Francis B. Head, Bart., Lond., 1839.

Thoughts on the Banking System of Upper Canada and on the Present Crisis, Toronto, 1837.

A History of Banking in the United States. By Wm. Graham Sumner
New York, 1896.

The Constitution, Toronto; 1837.

The Brockville Recorder, 1838-39.

The Montreal Gazette, 1837.

The Quebec Gazette, 1838.

that example. Quite ignoring all the exceptional conditions of the situation, he maintained that the promises of the banks should be kept in the letter, even though the commercial heavens should fall.

When the commercial and banking crisis loomed up, McKenzie saw his opportunity, and determined that no effort of his should be spared to discredit the banks in the eyes of the public, or to add to their difficulties in meeting their obligations. He had predicted the utter collapse of the banks and his reputation as a prophet was at stake. While the banks were curtailing their discounts and otherwise shortening sail before the storm should burst, McKenzie, through his paper *The Constitution*, abused them for sucking the blood of the merchants during prosperous times and then deserting them when distress prevailed. When the storm broke and the Lower Canadian banks suspended, McKenzie waved his hands frantically in scare headlines, and shouted in the largest type he could command, "Didn't I tell you so!" "Rush to the banks and get your notes cashed. Save what little you can of your deposits, before the doors are closed and your hard savings are lost for ever."

For result there was a severe run upon the banks. This they managed to meet partly by cash and partly by the usual time-consuming devices adopted by bankers with limited cash and clamorous creditors. Much use was made of the simple plan of furnishing dummy creditors with large quantities of notes in order that hours might be consumed in paying out at the wicket small silver, which was soon afterwards returned to the vaults through the rear.

Special devices were employed to block individual demands for large sums. Thus, in the case of the Commercial Bank at Kingston, a large quantity of notes was presented by a person who was suspected of desiring the specie for export. He was told that the clerk was busy with previous claims, and he would have to wait. Shortly afterwards he re-appeared accompanied by a lawyer prepared to formally protest every note not cashed on demand. He was asked to present his first note, which he did; whereupon the clerk with great deliberation and gravity proceeded to pay it in fractional currency. He was then asked for a second note, which was treated in like manner. At the end

of an hour the creditor and his lawyer retired in disgust having secured but a few pounds.

The extent to which the run upon the chartered banks had reduced their reserves may be gathered from the following statement, furnished to the Select Committee of the Assembly in 1837:

SPECIE IN THE VAULTS, 15TH MAY, 1837

| | |
|------------------------|----------|
| Chartered banks | £107,334 |
| Joint-stock banks..... | 11,039 |

SPECIE IN THE VAULTS, 15TH JUNE, 1837

| | |
|------------------------|----------|
| Chartered banks | £ 78,884 |
| Joint-stock banks..... | 12,094 |

The Bank of Upper Canada had paid out, in the redemption of notes, from May 3rd to June 24th, £39,516. It had imported from New York in that time £20,000, and on the 27th of June an additional £20,000. It will be observed that the joint-stock banks had more specie on hand at the end of the month than at the beginning of it. This is accounted for by the fact that before the crisis they held their reserves largely in notes of the chartered banks, particularly of the Bank of Upper Canada.

During the crisis Governor Head continued to press the chartered banks, and especially the Bank of Upper Canada, to continue specie payments, threatening coercion if they suspended, and promising special assistance if they held out.

In a letter to the Bank of Upper Canada, he promised to solicit assistance from the Military Chest, through the Commissary General at Quebec, on condition that the bank should pay out its funds to the last shilling. The Government connection and patronage, with its command of specie and foreign exchange, being of more importance to the bank than any other interests, it decided to continue payments, though such a course was contrary to the conviction of a majority of the directors.

In his evidence before the Legislative Committee, the Hon. Wm. Proudfoot, President of the Bank, stated that the banks of Upper Canada should "follow the same plan as in Lower Canada and suspend specie payments." The Hon. John Macaulay, a director and formerly manager of the branch at Kingston, said that there must either be suspension of cash payments or paralysis of the banking business of the country, hence he

favoured as the lesser evil the suspending of specie payments. On the other hand, Thos. Ridout, the cashier of the Bank, while admitting that it could not continue discounting or keep up its circulation without some legislative protection, yet professed himself opposed to the suspension of specie payments, taking the purely technical ground that the Bank should meet its obligations regardless of the effect which that might have upon the business of the country. This was indeed the language of the Governor, but that it expressed the real conviction of Mr. Ridout may be doubted. When Governor Head was recalled and the Bank of Upper Canada found it convenient to suspend specie payment, Mr. Ridout was much the stoutest advocate of the policy of suspension, and presented what passed for very forcible arguments against the very position which he now maintained.

The Commercial Bank was frankly anxious for suspension, and, as in the case of the Lower Canadian banks, it was backed in this course by the unanimous voice of a public meeting of the merchants and others at Kingston. But as it, too, enjoyed a certain amount of Government patronage and its notes were taken in Government payments, its directors wished to have the sanction of the Government before suspending specie payments.

On May 22nd, Lieut.-Governor Head sent a letter to the chartered banks, in which he expressed his approval of their determination to redeem their notes regardless of consequences, but added that, in response to their representations, should the worst come to the worst he was prepared to receive from the president, cashier and a majority of the directors of any of the chartered banks the accompanying declaration, upon which he would assume the responsibility of authorizing the bank to continue its business, under certain restrictions, until thirty days after the next meeting of the Legislature, without the necessity of redeeming its notes. The declaration was as follows: "We, the undersigned president, directors and cashier of the — Bank, do hereby solemnly declare that in the course of the business of the institution and under circumstances which we cannot control, this bank has actually, in the redemption of its outstanding bills, put out all the gold and silver specie in its possession or immediate power, and that the said bank for the bona-fide want of such gold and silver, and for no other cause, was forced on the —

day of — at the hour of — o'clock to suspend specie payment." Such terms being as good as impossible from every point of view, the banks making what virtue they could of necessity sacrificed their customers rather than attempt suspension.

The Commercial Bank then claimed a share in the assistance promised to the Bank of Upper Canada, and the Governor agreed to afford aid proportionally to the three chartered banks of the Province. To enlarge the sphere of service and give additional credit to the notes of the chartered banks, the Governor issued an order to the Receiver General, the Commissioner of Crown Lands, the Sheriffs, Collectors of Customs, Inspectors of Districts and all other public officials, instructing them to receive on the part of the Government of Upper Canada the notes of the three chartered banks.

The policy of the Governor was very severely criticized by almost all elements in the Province. The Toronto Board of Trade urged him to change his policy and authorize suspension of specie payments. The merchants in other parts of the country protested at public meetings against the Governor's action, and he was freely condemned by the papers of both Provinces. When, later, the Legislature was called in response to the clamour of the country, a Select Committee reported in favour of the bill authorizing the banks to suspend. In answer to the assertions of the Governor that the suspension would compromise the credit of the Province, the committee pointed out that, owing to the suspension of the banks in the United States and Lower Canada, it was impossible for the Upper Canadian banks to maintain specie payments and serve the exchange needs of the country. By the forced curtailment of their accommodations the banks were placing their customers in a very awkward position. The ordinary obligation of the banks, under normal circumstances, to cash their notes on demand, and which was established in the public interest, should not be made under special circumstances to militate against the public interest. The commerce of the country urgently requires accommodation, and the only question is as to whether this accommodation should be furnished in bank notes or in Government legal tenders to be issued to the banks.

When the first scare was over and the issues of the banks had been curtailed from twenty-five to thirty per cent., the urgent

need for money prevented the remainder of the notes from returning upon the banks. At the same time the banks, owing to the instability of the economic situation, could not with safety extend their issues nor hence their accommodations. Indeed, as was being discovered by the Bank of Upper Canada, it was often much more profitable under the circumstances to employ specie in the field of foreign exchange or in securing the high premiums of the specie market generally than to hold it as security for ordinary note issues. There was naturally a constant demand among the merchants in Upper Canada for the means of remittance to Lower Canada, a service which was a common occasion of their seeking discounts from the banks. To grant such discounts was now equivalent to advancing so much specie, and commanded rates accordingly. The Bank of Upper Canada, however, hit upon the plan of obtaining from the Bank of Montreal large quantities of its suspended notes with which it discounted the paper of the merchants without any drain on its own specie. Thus the distress occasioned by the policy of the Government in Upper Canada was partly relieved by the suspension which had been permitted in Lower Canada.

This object lesson was not lost upon the public, who soon came to regard the suspension of specie payment not as simply the lesser of two alternative evils which faced the country, but as some great boon or privilege the withholding of which by the Governor was the chief cause of the severe depression from which the Province was visibly suffering. The clamour for relief rose to such a pitch as to disturb the self-complacency of even Sir Francis Bond Head. With great reluctance he called a special session of the Legislature for the 19th of June, to take into consideration the commercial difficulties of the Province owing to the banking situation within and without the Province.

In the Speech from the Throne the customary solemn declaration that black is white was rather more impressive than usual, the shade of black in the present case being rather deeper than common, and the Governor quite aware that his assurances were certain to be questioned. However, he put a bold front upon his sophistry, declaring the situation in Upper Canada to be quite satisfactory and the banks not at all anxious to suspend; yet a few people professed to think that there might be trouble in

the future, which ought to be provided for, hence the special session. He implied among other things that the suspension of specie payments was a thing unknown in the history of British banking, and speculation or a crisis something heard of only among remote and Godless peoples.

In his despatch to the Colonial Secretary, he admits that the suspending of discounts in Upper Canada had caused a great deal of distress, and that from various causes the Province was in a bad plight. By the people the distress was attributed to the continuance of specie payments by the banks, an opinion which prevailed also in the Legislature. In the bill passed by the Assembly the chartered banks were to be relieved from the forfeiture of their charters should they suspend. The notes of all the banks of the Province, chartered and unchartered, as well as the debentures authorized by the last session of the Legislature, were virtually made legal tender. However, the Legislative Council rejected these features and placed in the hands of the Lieut. Governor in Council the power to allow the banks to continue business after suspending. These conditions the Assembly in turn rejected and the house was on the point of breaking up in disgust, when some of those who recognized the political ferment which this was sure to produce, managed to get a narrow majority to consent to the amendments of the Council.

The power to deal with the banks being once more left in his own hands, the Governor states that he intends to urge the banks to pay out freely what specie they have and when it is gone he will authorize them to suspend. But before the specie is exhausted he hopes that resumption may take place, and his position be vindicated. The patriotic attempt to represent things to the Colonial office not as they were, but as they ought to be, characteristic of not a few colonial officials, is well illustrated in the closing statement of the despatch. "Though a violent and almost universal clamour has been raised against the continuance of cash payments, yet I feel proud in informing Your Lordship that up to the present day no application has been made by any one of the chartered banks to the Legislature or myself for permission to suspend." This was simply a technical quibble with a virtuous intent to deceive, for suspension had been practically asked for more than once.

Soon after the close of the Session the Commercial Bank once more applied to the Governor for permission to suspend, hoping for more favourable conditions under the new Act. Again the Governor sought to defeat their purpose. He raised objections to the character of the returns made of the bank's affairs, he reversed his statements with reference to the United States banks and predicted an early resumption of specie payments. Meanwhile the public excitement was steadily rising, and as a last resort he stated the terms on which he would consent to the suspension of specie payment. They involved the loss of the bank's specie and the refusal of its notes in Government payments. The conditions were considered so onerous that the president and directors of the bank declared themselves unable to accept them, especially as the Bank of Upper Canada and the Gore Bank, which followed its policy, were not prepared to suspend. It is to be remembered that the public were much more anxious for suspension than the banks. Hence public sympathy was entirely with the Commercial Bank and against the Governor and the Bank of Upper Canada.

On July 7th, at a public meeting of the Toronto Board of Trade various resolutions were passed condemning the action of the Bank of Upper Canada in selfishly maintaining specie payments and withholding discounts from the merchants and others, while the bank employed its capital in more profitable speculations in foreign exchange. A public meeting at Cobourg on August 1st also strongly condemned the Bank of Upper Canada for its selfish attitude, and the Governor for the harsh conditions attached to suspension, and undertook to support any bank which would suspend in order to increase accommodation to the public.

At first sight it might seem strange that a bank should be accused by the business men of a country of selfish action in maintaining specie payments and declining the chance of revenue from even temporarily irredeemable notes. But, owing to the policy of the Governor, the bank could suspend payment of its notes only after it had paid out all its specie. Hence to increase its accommodation was simply to hand over its specie to the public at ordinary discount rates and deprive itself of the most profitable part of its business. Now, the Bank of Upper Canada owing to its Government connection had an exceptionally strong

command of specie and exchange, and it naturally wished to enjoy to the full the high profit on these. At the same time it could enjoy without risk to its reserves a limited but profitable note issue owing to the urgent needs of the country for a circulating medium. It is true that the Bank of Upper Canada, quite unlike the Bank of England, had divorced its own interests from the general interests of the country and was likely to suffer from this in the end, but in the meantime it was certainly reaping large immediate profits from the policy of "every man for himself and the Devil take the hindmost." While the question of suspension still filled the public mind the *Toronto Patriot* proposed that the banks, while still redeeming their ordinary notes on demand, should issue in addition a considerable quantity of post-notes payable twelve months after date, and with these afford relief to the public. The Farmers' Bank alone adopted the suggestion and issued a quantity of post-notes. The natural result was that the ordinary notes of the bank came back for redemption in much the same proportion as the others were issued, hence instead of affording the bank any practical relief the post-notes were the occasion of compelling it on October 1st to suspend specie payments altogether.

In the meantime the Commercial Bank had again made application to the Governor in Council for permission to suspend specie payments, and on the 11th of September, a public declaration of their resolution and a notice of their suspension were issued by the directors. On the 29th of September, 1837, an Order in Council authorized the bank to continue its business notwithstanding the suspension of cash payments. The bank had not been required to pay out all its specie, for it still had £17,327 on hand when allowed to suspend.

In suspending, however, the Commercial Bank lost the privilege of having its notes accepted in payment of public dues. This was a serious inconvenience so long as the other chartered banks had their notes accepted in Government payments, as it tended to compel merchants to seek accommodation from the Bank of Upper Canada so far at least as paying Government dues was concerned. It also threw into the hands of the Bank of Upper Canada all the Commissariat bills and other bills of exchange which gave a command on specie. This was but one

phase of the advantages enjoyed by the Bank of Upper Canada in abandoning much of the ordinary mercantile discounting and expanding into the more profitable business of dealing in specie and exchanges.

As in the case of the Lower Canadian and leading American banks, the Commercial Bank found it necessary to afford accommodation to its customers in specie where they had special need for it, charging of course a special rate for that form of accommodation. In order to replenish its stores of specie it had to pay a considerable premium on specie, or on bills of exchange commanding specie.

The Bank of Upper Canada having a virtual monopoly of the Government exchange, the Commissariat and other departments made their payments by means of cheques drawn upon that bank and which it, of course, paid in its own notes, these being received in Government transactions. Practically the only hold which the Commercial Bank could obtain upon the Government specie was through the purchase of these Government drafts upon the Bank of Upper Canada. When, however, the Commercial Bank, through its Toronto branch, presented these drafts to the Bank of Upper Canada they were tendered their own Commercial Bank notes, which, if accepted, would have utterly defeated the purpose of the bank in procuring the drafts. The Commercial Bank, therefore, refused to accept its own notes in payment of such bills, though in all ordinary transactions and balances it was quite willing to accept its own notes. Obviously there was a good deal to be said on both sides of the question. The matter being referred to a committee of the Assembly, it reported in favour of a measure to require all banks, whether paying specie or not, to receive their own notes in payment of sums due them at any place.

In the latter part of 1837, apparently on account of the growing uncertainty as to the safety of the banks, the Commissary General had withdrawn his accounts from even the Bank of Upper Canada. Yet the Bank continued to enjoy a monopoly of the Provincial Government business, and its notes were accepted in all Government transactions as equivalent to specie.

Towards the end of 1837 there was a marked recovery in the monetary condition of the United States. Exchange on Britain

was declining and the stronger banks were beginning to resume ; indeed a few eastern banks had never suspended. In January, 1838, exchange on Britain had reached par at New York and resumption was spreading. In April and May the rates were from four and a half to five per cent. in favour of the United States, specie was being extensively imported and resumption was general.

The commercial distress in Upper Canada during 1837, which was more severe than anywhere else on the continent, aggravated the political discontent of the people and might have led to very serious results, had not a small faction of the ultra radicals cleared the atmosphere by a disorganized and premature outbreak in December of that year, which was very easily suppressed. Thus unwittingly did McKenzie in the end render the country a great service. The rebellion in Lower Canada was much more serious from both the political and military points of view. On account of these outbreaks a great outlay on Government account immediately took place in both Provinces.

At this time the Bank of Upper Canada had only £80,000 of notes in circulation but £140,000 in specie. The Commissary General being suddenly in need of extra funds, the bank advanced him £50,000 in dollars, and offered to furnish its notes to meet his outlay within the Province. The offer being accepted the bank soon found its note issue raised to £154,000 and its specie reduced to £60,000. The bank of course received the Commissary General's bills in exchange for its notes. But these no longer brought the high premium in New York which they formerly commanded. By the end of February they were actually at a discount, and it was no longer profitable to deal in exchange. It now became the interest of the Bank of Upper Canada to reverse its policy of 1837. It now wished to issue its own notes, irredeemable if possible, and send its exchanges, not to New York as before, but to London.

Early in March, when bills on Britain were at a discount in New York, the Bank of Upper Canada discovered that owing to the disturbed condition of the frontiers it was unsafe to bring specie from New York; a difficulty not complained of by any of the other banks, even those of Lower Canada, which were preparing to resume specie payments. On March 6th, the bank

applied to the Governor in Council for permission to suspend specie payments. But the act passed the previous session required that the note issue of a suspended bank should not exceed its paid up capital. This did not suit the interests of the Bank of Upper Canada, as things now stood. But if changes were to be made the bank must act rapidly, for the session was almost closed. Its political influence, however, was equal to the occasion. On March 5th, the very last day of the session, a petition was received from the Bank of Upper Canada praying that authority be given to the chartered banks to issue notes to twice the amount of their paid up capital, notwithstanding the suspension of cash payments. The friends of the bank had on hand the draft of a bill, which they at once laid before the House. It was immediately taken up and rushed through all its stages at one sitting, disturbed only by a message from the Governor notifying the Assembly that he would prorogue the Legislature on the following day. The bill having passed the Assembly was immediately sent to the Council, which dealt with it even more expeditiously, for it had passed that House the next morning and was ready for the Governor's sanction when he arrived to close the session.

Though Sir Francis Bond Head had been notified of his recall and was simply holding the position of Governor till his successor should arrive, yet it is interesting to note how at the instance of the Bank of Upper Canada he had deserted the position which he so stubbornly held during the crisis, and now when the crisis was past, allowed the bank to suspend under greatly relaxed terms. The Act was to remain in force till the close of the following session of the Legislature.

The bank had accomplished its purpose and could now issue notes to the extent of £400,000 without the expense of importing specie from Britain or selling exchange until a handsome profit could be realized. At the same time the irredeemable notes of the Bank of Upper Canada continued to be received in all Government transactions as equivalent to specie.

Now it is quite obvious, when we regard the state of the money market, that the Bank of Upper Canada had no occasion whatever, other than its own temporary interest, for suspending when it did. It had command of an unusual quantity of specie

of its own, specie was cheap in America, the United States banks were rapidly resuming, and even the banks in Lower Canada, where the political disturbance was really serious, were preparing to resume.

The very narrow adherence to immediate self-interest which characterized the bank both in maintaining the specie basis while withholding accommodation in the period of crisis, and afterwards in suspending and extending its note issue when the crisis was over, and all this with the aid of Government machinery, did not escape the attention either of the commercial and banking interests in the Canadas or of the financial advisers of the Colonial Office. When the new suspension Act reached Downing Street it caused considerable surprise, but as it was understood that the Canadian banks would very soon resume specie payments no effort was made to have it disallowed. The Colonial Office thought it necessary, however, to transmit to Sir George Arthur for his guidance the opinion of the Lords of the Treasury on the Act assented to by his predecessor. In their opinion it was quite reasonable to pass the suspension Act of 1837 when the crisis was upon the country, but they saw no occasion for its renewal in 1838 and still less for the removal of the restrictions embodied in the former Act. Moreover it should be a necessary condition of any such Act that the banks should not further weaken themselves by paying dividends during the period of suspension.

In the meantime Sir George Arthur had arrived in Canada, too late, as he says, to prevent this Act from going into operation. The banks in Lower Canada having resumed payments in May, 1838, he sent, on July 7th, a circular to the chartered banks of Upper Canada urging them to resume payments as soon as possible, and pointing out the very favourable conditions for doing so. The Commercial Bank, adroitly shifting the responsibility from its own shoulders, replied that it was quite willing to resume whenever the Bank of Upper Canada should lead the way. The Bank of Upper Canada, with an angry fling at the Commercial Bank for leaving to it the whole burden of justifying suspension, nevertheless set itself to the difficult task. It points out how it came to the rescue of the Government when the rebellion broke out, as already stated. To show

that its credit is in no danger, it points out that it has remitted bills to London to the extent of £200,000, and has £60,000 of specie on hand. It has, therefore, £260,000 to meet an outstanding note issue of £154,000. Yet, in the face of this demonstration of strength, it goes on to say that it cannot possibly resume specie payments because to do so would require it to cease all discounting and to call in its outstanding debts as fast as possible, which would inevitably bring ruin upon the country, etc., etc. In fact its zealous solicitude for the exchange needs of the country is quite touching. Moreover, it continues, there is no general wish in the Province to enforce specie payments, for if the banks resumed the country would be drained of its specie by the great numbers who are selling their farms and possessions for what they can get and going off to the United States. The Government should wait until the next crop is harvested and until there is a resumption of immigration and capital from Britain. Again, before the resumption of payments there should be a uniform coinage established between Upper and Lower Canada; indeed there should be a special silver coinage struck for the Canadas. In connection with this certain statements were made as to the coinage of Lower Canada which were promptly refuted, with accompanying statistics, by the Bank of Montreal. However there was one reliable refuge behind these singularly weak outposts, and that was the fact that suspension had been authorized by law for another year at least, hence the Governor was powerless to bring about resumption.

The Bank of Upper Canada was building upon the confident expectation of a speedy reaction in the United States exchange market. It miscalculated the situation, however. The remainder of 1838 passed and the opening months of 1839 without any opportunity for the bank to unload at a high premium its large amount of London exchange. The result was that the profits of the bank for 1838 fell considerably below the average. The rest fund in the report for 1839 showed a fall from £17,551 to £13,237 instead of a rise to at least £19,500 according to the minimum annual gain during the crisis.

During the course of the next session of the Legislature, from February to May, 1839, exchange which had risen to par at New York during the latter part of 1838 fell off again; hence the

Bank of Upper Canada was naturally still opposed to resumption. A committee of the Assembly was appointed to consider the subject of banking. In their third report we trace the influence of the chartered banks and particularly that of Upper Canada. Owing to the discredit thrown upon the Reform element by the escapade of the ultra radical faction, the Compact party for the time held complete sway in the Assembly. Further, owing to the policy of Governor Head, the majority of the people, notwithstanding the easy condition of the money market, were still filled with a vague dread that the resumption of specie payment would reproduce a currency famine and greatly check trade. This idea the Bank of Upper Canada sedulously fostered, though when questioned on the subject it had to admit that for some time past it had virtually ceased discounting, the fact being that its large note issue represented not discounts to the public but the purchase of Government exchange. At this time it was granting less than half the accommodation to the public that it did at the beginning of the crisis, whereas the Commercial Bank had considerably increased its discounts.

The committee in its report simply echoed the arguments of the Bank of Upper Canada and presented a Bill to authorize suspension for another year, but requiring the banks to keep on hand the means of resumption when the proper time arrived, which was simply building the Bill on the condition of the Bank of Upper Canada as it then stood. In one clause a recommendation of the Commercial and Gore Banks had been introduced, to the effect that the banks should make a periodical exchange of their notes, and that balances should be settled by exchange on London. This clause, however, the Upper Canada people managed to eliminate from the Bill before it became law.

One reason for the opposition of the Upper Canada Bank to resumption is brought out in the evidence of the president and cashier, when taken in connection with the complaints of the other banks. The Bank of Upper Canada holding, as far as Canada was concerned, a virtual monopoly of the exchange on London, purchased by the issue of its own notes, sought to force the other banks to purchase that exchange at a high premium. But if it were to redeem its notes in specie the other banks could obtain the exchange by collecting and presenting its notes. In

this connection the attempt of the Commercial Bank to have balances settled by exchange on London is interesting. As already stated, the Bank of Upper Canada had curtailed its discounts and employed its notes in purchasing Government exchange while the Commercial Bank had employed its capital almost entirely in discounts to the public. There being much the same amount of the notes of each bank in circulation more Upper Canada notes were certain to fall into the hands of the Commercial Bank in the repayment of loans, than Commercial Bank notes into the hands of its rival, hence the balances at settlements would usually be against the Upper Canada Bank, and by requiring that balances should be met by exchange on London, the Commercial Bank would be obtaining an opening into its rival's close preserve. Could this concession be obtained the Commercial Bank was not at all anxious for resumption, for, since the needs of the Commissary General extended to considerably more than could be supplied by the Bank of Upper Canada, some of the surplus had been obtained by the Commercial Bank. Hence it too joined in the cry that the Commissary General could not get specie and had therefore to employ the notes of the chartered banks, and that without suspension the public service would be paralyzed.

One would suppose on reading the complaints of the chartered banks that the Commissary General was some impecunious tradesman desiring accommodation on long credit, and to whom the banks had extended a charitable indulgence since he had no security to offer beyond his personal credit. In point of fact the banks were the indulged parties, being favoured in return for their notes with bills on the British Treasury, affording a perfect command of specie on both sides of the Atlantic, though not always at a premium.

In all the evidence offered before parliamentary committees or in statements to the press, no one shows a more thorough grasp of the general conditions of banking and exchange than Mr. Francis Hincks. A sound judgment and an extensive mercantile experience in connection with the foreign trade of the Mother Country before coming to Canada, eminently fitted him to take a broad and impartial view of the situation. As cashier of the People's Bank he was quite familiar with the practical details

of Canadian banking. The People's Bank alone, of all the Canadian banks, had preserved its credit and maintained specie payments throughout the crisis. In doing so, however, since it had neither Government favour nor large resources, it was compelled to confine its business within a close following of its actual capital. Its interests were entirely in accordance with the sounder commercial interests of the country, and the opinion of Mr. Hincks and of the very intelligent and independent president of the bank, Mr. Jas. Lesslie, may be taken to represent the honest and well-informed business interests of the country. Both these gentlemen strongly urged the resumption of payments, there being, as they pointed out, no longer any excuse in the conditions of the money market, or the attitude of the leading American banks, to maintain suspension. Mr. Hincks points out that suspension cannot afford more than a temporary relief to the country at large, because of the checks imposed upon the currency of the country by the foreign exchanges. And here the chief objection to the continued suspension of the chartered banks comes in, for they have a monopoly of exchange for which they charge the merchants and others who require it exorbitant rates. Moreover, they show favouritism in redeeming notes for some while denying others. The banks of Lower Canada, he thinks, have acted much more in accordance with the interests of the public than have those of Upper Canada. If, however, the Legislature should decide to further extend the period of suspension, some effort should be made to have the banks afford fair rates of exchange, say from two to three per cent. above New York rates, which was certainly a very liberal margin. From the evidence of Mr. Jas. S. Smith, a Toronto merchant, it appears that the chartered banks were accustomed to charge from four to five per cent. premium on New York during the past year. Indeed the burden of all the evidence from those representing the commercial interests of the Province turns on the exorbitant rates of exchange charged by the Bank of Upper Canada, and the withdrawal of the bank from the ordinary discount business of the country.

However, the chartered banks and their friends carried the day and a bill was passed extending the period of authorized suspension until the 1st of November, 1839, and leaving it to the

discretion of the Lieut. Governor in council to authorize the banks to suspend for any further period which he might think proper. In deference to the wishes of the Home Government the banks were not to declare dividends during suspension.

In the course of the summer of 1839, the business of the Commissariat Office decreased and exchange on London advanced to a higher point than for a year past. The Bank of Upper Canada, taking advantage of the situation, disposed of its large holdings in London, reduced its excessive note issue and prepared to transfer its capital from the now unprofitable channel of foreign exchange to the more lucrative field of commercial discounts. It being no longer necessary to keep up an artificial suspension the bank resumed specie payments on November 1st, 1839, and the other two chartered banks followed its lead. The significance of this change in the case of the Bank of Upper Canada in particular may be observed from a comparison of the positions of the banks at the opening and close of 1839.

| | Bank of Upper Canada. | | Commercial Bank. | |
|---|-----------------------|-----------|------------------|-----------|
| | March 5th. | Dec. 5th. | March 11th. | Dec. 9th. |
| Notes in circulation | £321,853 | £160,472 | £279,410 | £222,653 |
| Deposits | 253,751 | 113,854 | 172,889 | 67,745 |
| Specie | 96,376 | 103,718 | 58,345 | 98,267 |
| Notes of other banks | 16,780 | 35,123 | 72,585 | 6,525 |
| Balances due from other banks and foreign agents | 300,277 | 23,537 | 128,644 | 6,061 |
| Total debts due to the bank, ex- cept balances due from other banks | 363,867 | 311,232 | 416,305 | 411,096 |

The rebellious outbreaks in Lower Canada, being much more serious than those in Upper Canada from both the political and the military points of view, the banks of Lower Canada had much more ground than those in Upper Canada for pleading the condition of the country as an excuse for remaining suspended.

In November, 1837, the Montreal banks thought it necessary as a precautionary measure to send their specie partly to Quebec and partly to Upper Canada. Yet when the first outbreak was over, keeping in touch with the movement in the United States, they followed the lead of the banks in New York State in returning to specie payments in the spring of 1838. In the meantime, however, they sought legal protection for their action.

The political condition of the Lower Province being so disturbed at the time of the collapse in the United States, it had been impossible for the banks to obtain any legal authority for their suspension when it first took place. But when in 1838 the Special Council was established, representative government having been suspended, the merchants and banks petitioned the Council for an ordinance giving legal sanction to the course which the banks had pursued. Their petitions set forth the circumstances under which the banks had suspended at the request of the public to save the specie of the country and to prevent widespread distress and bankruptcy among the merchants. The fruits of an opposite policy are referred to as sufficiently visible in the deplorable condition of the Upper Province where the banks have been finally compelled to suspend under the authority of an Act of the Legislature. As there is no immediate prospect of resumption on the part of the United States banks, they pray to have their suspension authorized until the American banks resume, or for such time as the Council may deem proper, and also that the notes of the banks may be accepted in payment of Customs dues.

On the 3rd of May, 1838, there was submitted by the Governor for the consideration of the Council, "An Ordinance to authorize the incorporated, chartered and other banks in this Province to suspend the redemption of their notes in specie for a limited time." As passed the Ordinance relieved the banks incorporated by Provincial or Royal charter, on approval by the Governor, from any disabilities in consequence of having suspended specie payments. They are required to furnish the Lieutenant-Governor on requisition with the usual returns of their affairs. Their notes are made practically a legal tender in ordinary exchange during the period of suspension. But the note issue was not to exceed the amount of paid up capital in each case, and the banks were forbidden to dispose of their specie during suspension. The provisions of the ordinance were extended to the branches of the Bank of British North America in Quebec and Montreal and to the Banque du Peuple, special returns being required from each of these. Power was reserved to the Lieutenant-Governor to withdraw from any bank the privileges of this ordinance after sixty days public notice.

When this ordinance came before the Lords of the Treasury in Britain, they recommended that in any future ordinances of a like nature it should be invariably required that suspension of dividends should accompany suspension of specie payments.

However, the banks in the adjoining States undertook to return to specie payments sooner than had been anticipated. Though an Order in Council was duly issued authorizing the suspension of the banks for two months, yet within a few days of its publication the banks determined to resume, the Banque du Peuple leading the way in point of time. The Montreal banks resumed on the 23rd of May, 1838, and the banks in Quebec followed.

When the Montreal banks resumed they ceased to accept the notes of the Upper Canada banks at par.

The Banks of Lower Canada shared with those of the Upper Province in the customary prosperity wafted hither from Britain when the peace of the country was threatened whether from within or without. The Lower Canadian banks, therefore, had no difficulty in maintaining specie payments throughout the summer of 1838. But the unusually vigorous outbreak of rebellion in the neighbourhood of Montreal in the autumn of that year quite alarmed the banks. They gave credence to the report that in order to possess the most certain means of carrying out their plans, the rebels intended to obtain through the medium of their notes a large part of the specie then in the vaults of the banks. Moreover, the chief area of the rebellion covered the line of communication between Montreal and New York by which supplies of specie were received.

These facts and fancies were set forth by the Bank of Montreal in a petition to the Lieutenant-Governor praying for some measure of relief for the banks of the Province. A meeting of the Special Council was called for November 5th. On the same day a petition was presented, and, by a suspension of the rules, an ordinance was at one sitting passed through all its stages except the third reading, authorizing certain banks therein mentioned to suspend specie payments in certain cases. The following day it passed the third reading and received the sanction of the Governor. Suspension was authorized until the first of June, 1839, unless earlier abrogated by the Governor.

Accordingly the banks at both Montreal and Quebec suspended for the second time on November 7th, 1838, with the exception of the Banque du Peuple, which did not desire to conform to the conditions of the ordinance. The Quebec merchants, in formally sanctioning the suspension of the banks under the circumstances, desired that they should make such arrangements with the collectors of Customs and the Government, as would facilitate the payment of duties and other public dues.

When the authorized period of suspension expired on June 1st, 1839, the banks of Lower Canada resumed specie payments once more, and maintained from that time the regular course of business.

ADAM SHORTT

QUEEN'S UNIVERSITY, Kingston

PROCEEDINGS OF THE TENTH ANNUAL MEETING OF THE CANADIAN BANKERS' ASSOCIATION

THE tenth annual meeting of the Canadian Bankers' Association was held at the Windsor Hotel, Montreal, on Thursday the 14th November, 1901.

Mr. E. S. Clouston, President of the Association, took the chair at 11 o'clock a.m.

The following members were present :

| BANK | REPRESENTED BY |
|-----------------------------------|----------------------|
| The Bank of Montreal - - - | E. S. Clouston |
| " Quebec Bank - - - | Thomas McDougall |
| " Bank of Toronto - - - | Duncan Coulson |
| " Molson's Bank - - - | James Elliot |
| " Ontario Bank - - - | C. McGill |
| " Eastern Townships Bank - - | William Farwell |
| " Banque Provincial du Canada - | Tancrede Bienvenu |
| " Merchants Bank of Canada - | Thomas Fyshe |
| " Union Bank of Canada - - | E. H. Balfour |
| " Canadian Bank of Commerce - | B. E. Walker |
| " Dominion Bank - - - | T. G. Brough |
| " Royal Bank of Canada - - | E. L. Pease |
| " Bank of Hochelaga - - - | M. J. A. Prendergast |
| " Imperial Bank of Canada - - | D. R. Wilkie |
| " Bank of Ottawa - - - | George Burn |
| " Union Bank of Halifax - - | E. L. Thorne |
| " Commercial Bank of Windsor - | Walter Lawson |
| " Western Bank of Canada - - | T. H. McMillan |
| " Traders Bank of Canada - - | H. S. Strathy |
| " Bank of British North America - | H. Stikeman |

The following associates were also present and signed the roll at the meeting:—Clarence Bogert; W. F. Brock; J. H.

Campbell; W. C. Harvey; A. E. Holt; F. Jemmett; R. B. Kessen; F. H. Mathewson; A. D. Munroe; G. de C. O'Grady; W. H. Scott; C. M. Stork; A. Gordon Tait; R. S. Williams.

Mr. Z. A. Lash, K.C., Counsel for the Association, was also present.

Mr. J. T. P. Knight, Secretary-Treasurer of the Association, acted as secretary of the meeting.

On motion of Mr. Strathy, seconded by Mr. Thorne, it was resolved:

That the Minutes of the last Annual General Meeting of the Association held in the City of Toronto, on the 15th November, 1900, as of record in Volume VIII, No. 2, of the Journal of the Association, be taken as read and confirmed.

REPORT OF THE EXECUTIVE COUNCIL

The Secretary read the report of the Executive Council which was as follows:

The Executive Council beg to report as follows regarding the work of the Association during the past year:

Since the last report of the Executive Council, the work of incorporating the Association has been completed. The Treasury Board finally approved the By-laws and Clearing House Rules on the 10th May, and the assumption of the responsibilities imposed upon the Association by Parliament in connection with the supervision of Bank Note Issues, makes of the Association an entirely different body from that of former years. The Circulation Accounts of a number of the Banks have already been inspected, as required in sub-section (e) of By-law 13, and the inspection of the remainder will it is expected be completed before the close of the year.

RECORDS OF CIRCULATION

In response to a request of the Executive Council, brief records of their issues of notes have been received from the large majority of the banks doing business in Canada, although in some cases this necessitated reference to books of almost ancient date. About \$300,000,000 represents the issued promises of the banks to the public since the incorporation of the oldest banks in the Dominion, of which amount some \$56,000,000 is now in circulation. Your Executive Council has instructed the Secretary, during his examination of the note accounts of the several banks to study the different systems of keeping same, with a view to framing a plan which can be recommended by the Association for adoption by all banks, thus making the records uniform. In the course of examination of the banks visited to date of this report a noticeable feature observed in the conflict of opinion shown by managers as to the value of a register to which reference can be made for the purpose of ascertaining the fate, by its number, of every note issued.

The method of destroying worn or mutilated currency is also receiving attention, and your Executive hopes to be able before the next annual meeting to recommend a system which will illustrate the history of all promissory bank notes from the engraving thereof to their final destruction by fire. The

results of this examination into the note accounts of the chartered banks promise to be most beneficial, and will enable the Association to supervise a very important branch of the business of the country, and thus to further strengthen the Canadian Banking system.

Beginning in June last, a monthly statement of the circulation of all the banks in the Dominion has been forwarded to the chief executive officer of each bank.

JOURNAL OF THE ASSOCIATION

The Executive Council wish to express their grateful appreciation of the services rendered to the Association by the Editing Committee of the Journal.

In accordance with the rules and regulations respecting Clearing Houses, contained in the Act to incorporate this Association, the chartered Banks doing business in the cities of Ottawa and Quebec have established Clearing Houses.

The statement appended hereto shows the financial position of the Association as at the 30th September last.

STATEMENT AS AT THE 30TH SEPTEMBER, 1901

| REVENUE | EXPENDITURE |
|------------------------------------|--------------------------------|
| Members' dues*.....\$6,700.00 | Balance of Bank overdraft |
| Interest on deposit receipts 14.67 | and interest..... \$ 464.39 |
| | Charges account 5,452.48 |
| | Balance in Bank..... 795.80 |
| <u>\$6,714.67</u> | <u>\$6,714.67</u> |

* In addition to this amount, \$7,066.60 was raised by special assessment to cover the costs incurred in revising the Bank Act, and in obtaining a charter of incorporation for the Association.

Audited and found correct.

J. GILLESPIE MUIR } Auditors
TANCREDE BIENVENU }

THE PRESIDENT—With respect to the report of the Executive Council, I may say that we have as yet taken no steps with reference to the different bank note circulation accounts, and nothing will be done until we get the reports of all the banks, when we will take a general view of the whole question, and make our recommendations.

On the motion of Mr. Hague, seconded by Mr. Prendergast, it was resolved:

That the report of the Executive Council and the financial statement be adopted.

REPORT OF WINNIPEG SUB-SECTION

The secretary read the report of the Winnipeg sub-section of the Canadian Bankers' Association as follows:

To the President and Members, Canadian Bankers' Association,

GENTLEMEN,—We beg to present the annual report of the Winnipeg Sub-section of your association.

The annual meeting was held in Winnipeg on 7th June, when Mr. F. L. Patton, Manager of the Dominion Bank, was elected chairman, and Mr. A. F. D. MacGachen, Manager of the Bank of Montreal, was elected secretary.

This Sub-section obtained crop reports from 125 correspondents in Manitoba and the Northwest Territories during August, which were found most useful at the time and the results of which have since proved to have been reliable.

As a result of the bountiful harvest, business in the West has been greatly stimulated, and sales of large tracts of lands have been made, amongst others to Americans which will be followed by a large immigration of desirable settlers next year.

The Canadian Pacific Railway report increased sales of lands to 31st ulto, amounting to 546,848 acres sold for \$1,725,948 as against 388,189 acres sold for \$1,224,158 up to same date last year.

The volume of business passing through the Local Clearing House is constantly increasing, clearings for the month of October, 1901, being \$15,174,895, as against \$9,183,477 in 1900, and \$12,689,000 in 1899. This increase makes it necessary to keep larger reserves of legal tenders for settling purposes and the members of this Sub section again desire to represent to the Canadian Bankers' Association, the necessity of urging upon the Dominion Government the desirability of an arrangement being made, whereby the Banks doing business here can transfer legal tenders between Winnipeg and the East by wire.

The members of the Winnipeg Sub-section extend to the Association a cordial invitation to hold their next annual meeting in Winnipeg, and desire to assure you that they would do all in their power to make the occasion enjoyable to visiting members.

Yours faithfully

F. L. PATTON, Chairman

A. F. D. MACGACHEN, Secretary

REPORT OF EDITING COMMITTEE

The Secretary read the report of the Editing Committee of the JOURNAL, as follows:

TORONTO, 12th Nov., 1901

To the Members and Associates:

The net cost of publishing Volume VIII of the JOURNAL was \$121.10 in excess of the net revenue from associates and subscribers' fees, of which expenditure your approval is asked. The increased outlay is mainly attributable to an advance in the cost of printing and paper.

Your committee have given special attention to the department for "Questions on Points of Practical Interest," and the wide use made of this column by associates is a matter of gratification. Answers to 88 questions have been published during the year, and the questions submitted, with few exceptions, have been of an interesting character—in some instances leading to discussions of a most profitable kind. All answers are carefully considered by the full committee, and those of a legal character are revised by Mr. Lash, whose services your committee again desire to appreciatively acknowledge.

Respectfully submitted

J. H. PLUMMER

J. HENDERSON

E. HAY

THE PRESIDENT'S ADDRESS

Mr. E. S. Clouston, President of the Association, then delivered an address, the text of which is published elsewhere.

MR. WILKIE—Mr. President, I am sure that every Member of this Association who is present—as well as those who are not present, but who will have an opportunity I trust of reading your address—will be much indebted to you for the carefully prepared statistics which you have presented. The address which you have just delivered, sir, takes a high rank. It is I believe quite equal to anything which we have heard before from the Chair of this Association, and it would do credit to the ablest member of our Legislative bodies who might deliver such an address on the financial questions of the day.

The Banking community of Canada has a great responsibility thrown upon it, and we shall fail to discharge our duty not only in the interests of the Banks but in the interests of the public at large, if we do not present our ideas on the questions which come under our knowledge, to the people of Canada. Of course if the people prosper, we prosper, and we should never miss an opportunity of impressing upon the Government and the people such views as are embodied in the President's address. This, Mr. President, has been rather a difficult year to administer the affairs of the Association. A great many very important subjects have come up for the consideration of the Association. The incorporation of the Association itself was one important matter. The rules for the government of the note circulation have taken up a great deal of time and everything possible has been done to bring about a satisfactory solution of that most important subject. I have very great pleasure in moving a vote of thanks to the President for his able address, and I would ask Mr. Clouston if he would be good enough to let the members of the Association have a copy of his address. Applause).

THE PRESIDENT—I shall be pleased to do so.

MR. FYSHE—I have very great pleasure in seconding Mr. Wilkie's motion. I have listened with great interest and profit to the address of the President this year and I appreciate it highly. I may add that in my opinion the adminis-

tration of the affairs of the Association by our President has been altogether admirable. (Applause). I only hope that he will do us the favour of allowing us to continue him in the position which he so well fills. (Applause.)

MR. HAGUE—I wish to say a word about that part of the address which concerns more especially the general public. I will not dwell upon that part of the address which is connected with our own internal administration, although that is also of interest to the public as we all know. Those very interesting figures about the growth of our trade and commerce should be advertised from one end of Canada to the other, in order that they might develop still further that patriotic spirit the evidence of which is abroad. I would wish also that our President's address should be distributed, as no doubt it will be, among our good friends in the United States—and they are our good friends, as we are good friends to them. This address will show the people of the United States that there is at any rate a little progress being made in this outside region of the American Continent which they sometimes are inclined to think so little of, and which many of them know so little about. I believe it would be extremely desirable to have the President's address circulated also in the United Kingdom. (Hear, hear.) Even with all the means of information so much in evidence for the last fifteen or twenty years, a vast amount of ignorance as to Canada still prevails in Great Britain, and nothing could be more calculated to dispel that ignorance and to show what kind of a country Canada is, than the statements, and the figures and the little statistics contained in the President's address. I call them "little statistics" because they are simply and plainly put so that all may understand them at a glance. I distinguish them from what might be called large statistics, which are sometimes so involved that the general public do not read them, and do not understand them if they should read them. The statistics set forth in the President's address are so admirable and so convincing that if they are circulated from one end of England to the other every one will understand them. We do not want to borrow any more money from England; we do not want our credit enhanced, because it is as good as it could be—even almost as good as the credit of England herself—but nevertheless the publication of the President's address would do

good in many ways if circulated in England. I believe it would tend to bring to our shores a most desirable class of immigrants. I thoroughly agree with what our President has said on the question of the population of Canada. Although others have expressed a contrary opinion, it is my belief that the quality of our population is really of far greater importance than the mere quantity. (Applause). We might bring here a very large number of undesirable immigrants who would not, as the President has said, assimilate readily with us, and who would take a whole generation before they became a class of citizens who would add real strength to the country. We should direct our efforts to inducing to our shores emigrants from Great Britain and Northern Europe. Some of our friends say: Why not bring over some people from France? I have no objection to that in the world, I wish they would come; we would be glad to welcome them. But there are certainly other peoples in Europe that are not desirable. There are some who are more desirable as citizens of this country than others, and it is the most desirable class that we would like to see coming here. In coming here, they will have an opportunity of sharing in the great growth and prosperity of Canada, of which there is so much evidence at the present time.

Though I am not a prophet—a man is a fool who pretends to be—still I do not see why the next ten or twenty years may not show as remarkable evidence of growth and prosperity as the last one or two decades. Why not? Old men are always fond of reminiscences, and I may say that I remember the time when if these figures contained in the present address had been placed before an association of bankers, or any body of merchants, as a prophecy of what would happen in twenty or thirty years, they would be laughed at and the man who prophesied them would be spoken of as a dreamer, for it would be believed to be an utter impossibility that Canada should grow to such an extent as that. But it has all come to pass as you see. I do not see why the younger men here may not, twenty years hence, be in possession of figures which will show quite as astonishing a measure of growth and development for our country as the figures we have heard to-day indicate. I am glad that the press will have an opportunity of publishing the President's address in full, and that

the people of Canada, and of the Motherland, and of the United States, and of Europe will be able to mark, read, and inwardly digest. (Applause.)

The motion thanking the President for his address was carried with applause.

THE PRESIDENT—I have to thank you very much for the kind remarks that have been made in reference to the few words I have addressed to the Association. It was my great desire to relinquish the Presidency this year and to let it pass to Toronto, but it was represented at the meeting of the Executive Council yesterday, that the work I had undertaken during last year was not finished; probably I did not pay proper attention to it (No, No), and that we require to finish it off more carefully. In view of that representation, I have decided—if you choose to elect me—to retain the Presidency for another year. (Applause.) But I do it on the condition that the Members of the Executive who were with me and shared my labours last year, and who gave me such valuable assistance, will continue on the Executive for another year also. Therefore, in the election of the officers, which is the next business, I would be very much pleased if you saw your way to re-elect all the old members who were on the Executive last year.

ELECTION OF OFFICERS

On the motion of Mr. Coulson, seconded by Mr. Wilkie, the President was requested to cast one ballot for the election of officers for the ensuing year.

The officers were re-elected as follows:

HONORARY PRESIDENTS

| | | |
|----------------------------------|-----|--|
| LORD STRATHCONA AND MOUNT ROYAL, | - | President Bank of Montreal |
| GEORGE HAGUE, | - - | General Manager Merchants Bank of Canada |

PRESIDENT

| | | |
|-----------------|---------|----------------------------------|
| E. S. CLOUSTON, | - - - - | General Manager Bank of Montreal |
|-----------------|---------|----------------------------------|

VICE-PRESIDENTS

| | | |
|------------------|---------|---|
| THOS. McDOUGALL, | - - - - | General Manager Quebec Bank |
| DUNCAN COULSON, | - - - - | General Manager Bank of Toronto |
| H. STIKEMAN, | - - - - | General Manager Bank of British North America |
| GEO. BURN, | - - - - | General Manager Bank of Ottawa |

EXECUTIVE COUNCIL

| | | | |
|-----------------------|---|---|--|
| B. E. WALKER, | - | - | General Manager Canadian Bank of Commerce |
| THOS. FYSHE, | - | - | Joint-General Manager Merchants Bank of Canada |
| D. R. WILKIE, | - | - | General Manager Imperial Bank of Canada |
| T. G. BROUGH, | - | - | General Manager Dominion Bank |
| M. J. A. PRENDERGAST, | - | - | General Manager La Banque d'Hochelaga |
| W. FARWELL, | - | - | General Manager Eastern Townships Bank |
| J. TURNBULL, | - | - | Cashier Bank of Hamilton |
| H. S. STRATHY, | - | - | General Manager Traders Bank of Canada |
| E. L. THORNE | - | - | General Manager Union Bank of Halifax |
| E. E. WEBB, | - | - | General Manager Union Bank of Canada |
| T. BIENVENU, | - | - | General Manager Banque Jacques Cartier |
| G. P. REID, | - | - | General Manager Standard Bank of Canada |
| E. L. PEASE, | - | - | General Manager Royal Bank of Canada |
| C. MCGILL, | - | - | General Manager Ontario Bank |

EDITING COMMITTEE, JOURNAL OF THE ASSOCIATION

| | |
|------------------------------------|---|
| J. H. PLUMMER (<i>Chairman</i>), | Ass't Gen'l M'g'r Canadian Bank of Commerce |
| J. HENDERSON, | Inspector Bank of Toronto |
| E. HAY | Inspector Imperial Bank of Canada |

CORRESPONDING MEMBERS

| | | | |
|-----------------|---|---|--|
| F. HAGUE, | - | - | Merchants Bank of Canada, Montreal |
| W. GODFREY, | - | - | Manager Bank of British North America, Vancouver |
| W. B. TORRANCE, | - | - | Supt. of Branches Royal Bank of Canada |

AUDITORS

| | | | |
|--------------|---|---|---|
| T. BIENVENU, | - | - | General Manager La Banque Jacques Cartier |
| J. G. MUIR, | - | - | Chief Accountant Merchants Bank of Canada |

COUNSEL

Z. A. LASH, K.C.

SECRETARY-TREASURER

J. T. P. KNIGHT

On the motion of Mr. Elliot, seconded by Mr. McMillan, it was resolved: "That the thanks of the Association be tendered to the President, Vice-President and other members of the Executive Council, and to the Editing Committee of the Association, and to the Auditors for their services during the past year."

MR. ELLIOT said: These gentlemen who have acted so efficiently as our officers during the past year are very busy in the discharge of their ordinary duties, and this fact renders them all the more deserving of our hearty thanks for having given so much of their time to the service of the Association.

THE PRESIDENT—I have to thank you on my own behalf and on behalf of the other gentlemen mentioned. I feel, so far as

I am concerned, that I have not given sufficient attention to the business of the Association owing to the other large interests confided to me. Next year we will try to do better.

ACCEPTANCE OF SIGHT DRAFTS

THE PRESIDENT—There is a question which came up at the Executive Meeting yesterday and which perhaps I might mention. It has been the custom in lodging sight drafts for acceptance to allow 48 hours. Our lawyers advise us that if we do not procure acceptance from the date of presentation, and if the draft is accepted only 48 hours afterwards, then, according to the strict letter of the law, we lose the endorsers. That, however, is not a matter in which we can do anything, because no action of this Association will over-ride the law. I thought I had better make this announcement in case some may not be aware of the fact. I confess I did not myself know it. I thought we had a right to accept after 48 hours.

The Secretary read the following correspondence on the matter :

DEAR SIR,—The following letter and opinion received by me from the sub-editor of the JOURNAL OF THE CANADIAN BANKERS' ASSOCIATION, dated 5th October, 1901, will no doubt be of interest to you :

"The reply to a question, sent you under date August 1st, was in accordance with our usual practice, prepared for submission to Counsel, but through an oversight was forwarded without this being done. The opinion expressed was in agreement with that generally held by bankers, and is also in accord with the custom of banks; but we find that our Counsel takes a quite contrary view, and we have therefore amended our reply as per the enclosed. The point is an important one, and it is well that it has been brought up."

The Question and amended Reply are as follows :—

"*Question* 438—Referring to *Question* 399, will you kindly add an answer to the following supplementary question: If the holder of a sight draft should voluntarily leave it with the drawee for 48 hours for acceptance, and the drawee date his acceptance on the last day on which he holds it, must the holder, in order to prevent the release of the drawer or previous endorsers, protest the draft ?

"*Answer*.—Yes; this would be a qualified acceptance, and should the drawee not make the necessary change of date the draft should be protested."

Yours truly,

JAS G. TAYLOR,

Chairman Clearing House Committee.

THE PRESIDENT—It will be a matter for your own judgment as to whether you will allow the acceptance to take place later on or not.

MR. McDUGALL—Might I ask that the Secretary should be authorized to issue a circular on this matter to the different banks.

THE PRESIDENT—We have already instructed the Secretary to issue a circular to all the banks containing this opinion, because we thought it was a matter that was not generally known.

NEXT MEETING AT TORONTO

MR. WILKIE extended an invitation to the Association to meet in Toronto next year.

The President said that personally he would be delighted to go to Toronto.

On the motion of Mr. Wilkie, seconded by Mr. McDougall, it was resolved that the eleventh annual meeting of the Canadian Bankers' Association be held in Toronto next year.

On the motion of Mr. Stikeman, seconded by Mr. Burn, it was resolved that the thanks of the Association be tendered to the Directors of the Windsor Hotel for granting the use of the room for the meeting.

INTEREST ON DEPOSITS

Matters relating to the rate of interest on deposits were brought up by Mr. Farwell and Mr. Fyshe, and after some discussion they were referred to the Executive Council.

LOANS ON SAWN LUMBER

MR. ELLIOT—Perhaps I might mention that in a decision given against the Molsons Bank it was held that advances on sawn lumber are not legal and that our claim was invalid. By the Banking Act we are allowed to lend on the products of the forest, and the Court decided that while logs were a product of the forest, sawn lumber was not.

MR. WILKIE—That seems an extraordinary decision.

MR. ELLIOT—I thought so.

MR. McDUGALL—Did you lend to the man who got out the logs?

MR. ELLIOT—We lent to the wholesale dealer. The point

decided was that sawn lumber was not a product of the forest in the same manner that flour is not a product of agriculture.

MR. FARWELL—Was the lumber in general stock?

MR. ELLIOT—Yes, but that was not the point. We are allowed by the Banking Act to lend on the products of the forest.

MR. COULSON—It was an interpretation of the words "Products of the forest."

MR. ELLIOT—That was the point in the case.

The Proceedings of the 10th Annual Meeting of the Association then ended.

ADDRESS OF THE PRESIDENT OF THE CAN- ADIAN BANKERS' ASSOCIATION

DELIVERED AT THE TENTH ANNUAL MEETING OF THE ASSOCIATION

CUSTOM lays upon your President the task of addressing you in annual meeting upon the events of the year which more nearly concern us as Bankers. I shall take advantage of this opportunity to touch lightly upon one or two topics.

In the first place, I desire to draw your attention to the fact, that though we were incorporated as "The Canadian Bankers' Association," by Act of Parliament in 1900, we actually obtained full authority from the Treasury Board to exercise the powers conferred upon us only in May last, and our first statements in connection with the circulation were issued in June, so that we can hardly be said to be in full working order yet. We are, however, making progress and gradually gathering the threads together, so that in a short time we shall employ the authority and discharge the duties entrusted to us in their entirety. As time goes on we can appreciate more fully the great responsibility placed upon us as an Association, and I know it will be our endeavour to justify the action of Parliament by rendering at all times a satisfactory account of our stewardship. I may add that the policy of conferring upon our Association large powers of supervision in the administration of the Bank Act is regarded by high financial authorities in Great Britain as calculated to contribute powerfully to the stability of the banks and to the protection of the public.

Since our meeting a year ago the figures of the Bank Returns show steady increase, and without going into details I may mention that the circulation has expanded during that period about \$5,600,000; public deposits have risen nearly \$40,000,000; and the banks have some \$14,000,000 more of loans employed in the business of the country. Our present condition,

indeed, may be contemplated with satisfaction, and with reference to the future I can only give expression to the hope that our prosperity may continue for some time to come.

With regard to the general business of Canada, the great commercial prosperity which began in 1897 remains undiminished, all the outward and visible signs of active and profitable business having increased during the twelve months. Our foreign trade amounted \$377,725,600 in the fiscal year ending 30th June, 1901, or \$5,000,000 more than in the preceding year, and no less than \$146,000,000 in excess of the foreign trade of 1896. That is to say, in the brief space of five years the money value of our imports and exports has been enhanced by 63 per cent. An analysis of these figures brings out many gratifying points. For example, the foreign and domestic exports have contributed more largely to the increase than have the imports, and for the past seven years our aggregate exports have exceeded our imports. Without opening up that much debated and many-sided question, the balance of trade, it is obvious that a debtor country is relatively accumulating wealth when exports exceed imports, and in this connection it is significant that while from 1886 to 1891 the domestic exports of Canada were less than the imports by \$127,726,000, from 1896 to 1901 the imports only exceeded the domestic exports by \$6,000,000, or a betterment in the balance of trade of upwards of \$120,000,000. Home trade has likewise greatly prospered. Manufacturing concerns, with few exceptions, have been busily employed; railway traffics have been the largest in the history of the country; labour continues scarce, and the rate of wages relatively high; mercantile failures are few in number, and not formidable in extent. In a word, the good times are still with us.

We have taken this year the decennial census, and the result has been received with a good deal of disappointment. It will not be disputed that the one signal failure of the confederation accomplished in 1867 has been our inability to attract population as rapidly as we expected. National sentiment has become strong, the pride and prejudice of provincialism have disappeared, large and substantial material progress has been made, and a high average of comfort is enjoyed by the people. These things we *have* accomplished, and without discussing the causes of our

slow progression in population, I desire to point out that too much importance may be given to this phase of our national life and that there are bright sides to the picture pleasant to survey. What, after all, Canada needs is quality rather than quantity. Mere numbers do not necessarily ensure stability, strength or prosperity. Infinitely preferable is it that we possess a law-abiding people, imbued with a high sense of national pride, thrifty in habit, resolute in purpose to maintain the integrity of their country, rather than to encourage a large immigration of alien races beyond our ability to assimilate. Our efforts ought to be directed chiefly to the retention of our native born, and the attraction to Canada of the better class of emigrants from Great Britain, Northern Europe and the United States. Then if our growth is slow, it will at least be upon a firm and sure foundation.

How thrifty a community Canada has become let the following figures tell. Placing the population this year at 5,400,000 as indicated by the later census returns, I find the foreign trade per head to have been \$71.50 in the fiscal year 1901, as against \$45 in 1891, \$47 in 1881, and \$49 in 1871. The deposits of the people in the Joint Stock, Government and Savings Banks have risen in steady progression from \$19 per head in 1871, to \$27 in 1881, \$40 in 1891, and \$74 in 1901, most striking evidence of the practical prosperity of the people. The amount of money employed in the daily business of Canada, excluding subsidiary coinage, is now \$11 per head; whereas twenty years ago it did not exceed \$7.70 per head. These examples of thrift, enterprise and commercial activity might be multiplied by reference to railway earnings, to industrial development, to the productions of farm, forest, fisheries and mines, to postal and insurance statistics, in short, to all those standards by which the material condition of a country is measured. The foreign trade of the Dominion per head of population is exceeded by few countries, and with our valuable stores of iron, coal and timber, and great extent of virgin agricultural lands, there would seem to be no valid reason why this trade should not continue to expand.

A good deal of attention is being given to the transportation facilities of the country with a view to not only cheapening the cost of carriage to the Canadian people, but of attracting to our

routes a considerable portion of the commerce of the American Northwestern States. The subject is not new. For thirty years and more it has been a theme of discussion, and I regret to say the accomplishment is as yet far short of the expectation. In railway projection we have shown courage and enterprise, generously aiding private capital with public funds, and the policy has been richly recompensed. As much, however, I fear cannot be said of our aids to ocean commerce, and when we treat of foreign trade the water carriage is as important a factor as land carriage. A link remains to be supplied in the chain of inter-imperial communication in the form of a fast steamship service to Great Britain. It ought to be our motto that the best is not too good for Canada. More than forty years ago, namely, in 1860, the Legislature of the old Province of Canada deemed efficient steamship communication with Great Britain of sufficient importance to justify a grant of \$8,000 per trip, or \$400,000 yearly, in aid of a weekly service, a charge upon the public revenue immeasurably greater in proportion than would be to-day the sum necessary to secure to us as speedy a service as anywhere exists. The concomitant and subsidiary advantages of a fast steamship line between Canada and Great Britain, reducing the voyage from Europe to America to the lowest possible limit, would be, I am satisfied, very great, and the faith and pluck which may give us such a service will not long wait vindication in material results of the highest benefit to the Dominion. A recent letter in one of our daily papers from one of the highest authorities in the country on fast ocean transportation throws great light on the subject, and I would recommend all who are interested in the future of Canada to give careful attention to it.

One word more, and I have done. A quarter of a century ago the paid up capital stock of banks in Canada was \$66,800,000; to-day it is \$67,480,000, or practically the same amount. In the interval the "Rest," or reserve of profits has risen by more than 50 per cent., and now stands at \$36,900,000. We have, therefore, been able to conduct an immensely increased domestic and foreign trade upon a stationary bank capital stock, a result due to the excellence of our banking system, and affording convincing evidence of the adaptibility of that system to the requirements of a young and growing country.

THE ECONOMIC EFFECTS OF BANKERS' ADVANCES*

THE ramification of the country by the branch-bank system, which so greatly facilitates the distribution of capital according to the requirements of different localities, is the supreme service rendered by the banking community to the economic development of the nation. During the closing decade of the nineteenth century, no fewer than 557 places in Great Britain and Ireland have been brought into a network now comprising 6,521 offices and in touch with every factor which goes to make up commercial life. How is this distribution effected?

In bank balance-sheets there are items appearing on the assets side which consist of advances to customers granted against some form or other of security. Deeds of houses and land, life policies, bills discounted, various bonds, stocks and shares, and the guarantees of men of property are the tangible representations of accommodation to merchants and manufacturers, the agricultural and the professional classes, now amounting to over £570,000,000, or five per cent. of the capitalized gross annual value of the total income of the United Kingdom. On the other side of the balance-sheets, £835,000,000 appear as deposits and current accounts, the accumulations from a thousand and one sources, but very largely the result of the thrift of the working classes.

On the money deposited with him, the banker allows the community a certain rate of interest, while the proportion of it which he advances for the development of trade and industry, assists after providing the *justum pretium* for its use which forms part of the banker's profit, in satisfying the requirements of modern commercial conditions that profit should consist of interest on capital, insurance against risk and wages of manage-

*EDWARD E. GELLENDER in *The Economic Journal*, September, 1901. Published by permission of the *Journal*.

ment. It is a process of the capitalization of wealth, or land, labour, and capital, so that every latent element shall become a reproductive resource. Take an instance. A house is built on a plot of land, that is to say, capital is placed in that land, and interest accrues, partly as rent for the land, partly as interest on the capital the erection represents. When an advance is made on the deeds of this property, to the rent, and the interest is added, an additional return and an additional reproductive power otherwise difficult to realization. In those cases in which a certain amount of borrowed capital is absolutely necessary for the success of an enterprise, and without which no profitable return at all could be obtained, the extent of the additional economic development secured is much more important than in the instances of voluntary extension of trade for the purpose of doing a wider business, for the one is a victory over a negative quantity, while the other is simply the assertion of an affirmative factor.

Those divisions of bankers' advances which consist in the discounting of trade bills, and in granting loans against letters of guarantee of responsible persons require separate examination. The difference between the value of the goods as represented in a bill of exchange due at a future date, and their value at the present moment, may be taken as the amount of interest on the bill for the term of its currency, and so, in order to meet the demands of modern production that capital should be productive, not only of more goods but also of more value, bankers are called upon to assist in that reduction of the cost of production which consists in minimizing the differences in the value of various products due to the varying lengths of time these necessitate, and thus contribute to that dual attribute of "labour and delay," that power of waiting longer for returns on capital, now so essential to economic progress. And as the proportion between bankers' deposits and the aggregate amount of bills of exchange is yearly becoming wider, tending to a permanency of lower rates for money, this power of waiting is gradually being made easier. Now while advances on deeds, bills, and money securities, being based on some realizable asset, are factors which bring to bear upon latent resources the necessary awakening influence, those made against guarantees are essentially items which actually create credit, and as such swell the sum of inter-liabilities which

in times of crisis has to be dissected. Nevertheless, when incorporated with sound methods of business, they materially assist the national reproductive power.

Thus bankers' advances, in facilitating the constant consumption and replacement of capital on the one hand, and its position as an aggregate permanency on the other, make up a mechanism which turns a stagnant pond into a reservoir possessing all the life of a swift river. The centrifugal force of the circulatory movement is the security held.

If it is argued that national wealth has so increased that there is less necessity to borrow, the records of banking show that the demand for accommodation does not decrease, but is accentuated, in times of prosperity. This evidence, in conjunction with that of the national accumulation of capital, makes the intensification of the demand in the future a foregone conclusion. Looking at the returns of sixteen leading banks for the year 1900, no less than 66 per cent. of the total increase of resources is due to advances and discounts, and in the nine cases in which it is possible to divide these two items, $11\frac{1}{2}$ per cent. appears as the increase in advances, and $4\frac{1}{2}$ per cent. for discounts. It is true that the enormous growth of company promotion in recent years, and its culmination in that combine movement which is perhaps the chief economic feature of the last year of the Victorian Era, necessitating that the public should be appealed to direct for the required capital, has thereby contributed to the increase of transactions on the stock markets, but because of the preponderating influence of the utility of banking credit, the underlying principle is the same, and the eventual effects revert to bankers.

Careful and judicious observance of a fixed proportion between available funds and amounts advanced, and of a margin on the value of the security in excess of what is lent, has become a well established principle among bankers. The commercial crises up to 1847 were ascribed to an artificial credit created by the excessive note-issues of a large number of small banks. But with the growth of the cheque system and the decline of the demand for bank-notes, now rapidly reverting into the hands of the Bank of England, bankers' advances came to assume a more prominent position in financial life. Hence the importance of resisting the temptations of higher rates and increased profits

which invariably present themselves to bankers in periods of trade inflation, and the refusal to allow supply to be at the mercy of demand is a powerful factor in the maintenance of national stability and credit. Taking £1,060,000,000 as the resources of English banks at the end of 1900, and 68 per cent. as the proportion of their advances to their liabilities on simple contract, some idea may be gathered of how much of the reserve capital of the nation the margin between the value of the security and the sum for which it is pledged represents in the aggregate.

There is no doubt that the prevailing spirit of amalgamation in the banking world for some years past has intensified the operation of bankers' advances on financial and industrial life. The nearer approach to that policy of complete uniformity, which has long been recognized as a factor in economic progress, put into force in the consolidation of advances, has not only facilitated the simplicity of the mechanism by which they can be obtained, but has also bestowed a greater power of control on a few sound and wealthy joint-stock institutions over the speculative and excessive-trading classes, rendering the policy of weeding out or placing on a more satisfactory basis all connections of a doubtful character a comparatively easy task, and thus silently and surely strengthening commercial life.

But the tendency of the great London banks to absorb the smaller provincial institutions is so effectively drawing capital away from the agricultural districts to the central money markets of the world and to the great centres of manufacturing and industrial life as to make the cry of "back to the land" more and more difficult of realization. The less cumbersome and more easily realizable nature of advances on what are known as "money securities" and trade bills, the centralization of capital in the hands of a few mammoths whose guarantee to the public, in addition to a large and commensurate subscribed capital, is the assumption of the control of market rates, and, indirectly, the great industrial combines, all act as hindrances to the lending of money to the agricultural classes. This is very clearly exemplified in the disadvantages under which purely country banks labour in having to compete with the branches of banks with head-offices in London, and is one of the secrets of the absorption of so many provincial concerns by the giants of Lombard Street. Of the

sixteen banks already referred to, the ten with country branches took nineteen-twentieths of the increase in deposits and current accounts, and appropriated four-fifths of the increase in advances and discounts, during 1900; and taking the figures of eleven provincial banks whose districts embrace the manufacturing and commercial centres of England, and those of seven banks whose business is mainly in connection with agriculture, while the advances of the former show an increase of $3\frac{1}{2}$ per cent. those of the latter are barely one per cent. higher. The assumption of the offensive in recent years by some country banks in absorbing joint-stock and private neighbours is a valuable defence of the necessity for the protection of agricultural interests.

Although recent annual bank meetings have given opportunity for the sounding of warning notes with references to the cash reserves of banks, the present condition of credit dispels any serious thought of danger. But the necessary attribute and the universal public demand that institutions, whether financial or political, national or provincial, should be guided by a policy of rendering impossible what seems improbable by taking steps to prevent its occurrence, suggests the question. What is the position of bankers' advances when trade panic or long depression reigns, and every individual, as well as every corporate body, wishes to get a tangible hold on the part of his property which he has entrusted to others? Over and over again it has been proved that these cannot be called in at a moment's notice. Strange as it may seem on the surface, this hindrance is one by which the community on the whole is at such times benefited. Only those first in the field, under such circumstances, could realize even what are known as "gilt-edged" securities, and if these are sold to any considerable extent, at what sacrifice! Nothing less than the irretrievable loss of so much productive capital; whereas the asset liable to little or no fluctuation in value remains intact, because it cannot be liquidated at the moment, and stands out as a reliable fund depending for its value not on "rings" and "corners," or speculative devices, but on the inexorable law of supply and demand.

A factor in banking business which certainly possesses elements wholly similar to actual advances is the "banker's opinion." Intangible, but none the less important because its

insidious effects are not apparent to the general public, the assertion may safely be made that the discontinuance of a custom which has well-nigh become law would paralyze trade. The recent litigation between Messrs. Charles Hirst & Son and the West Riding Union Bank, which has brought before the public mind the necessity for disinterested reports by bankers to one another as to the status of their clients, has not only emphasized the legal responsibilities these opinions involve, but should in the future act as a deterrent to any policy calculated, owing to the withholding of the whole truth, to undermine credit. In short, it has shown that unless these opinions can be relied upon implicitly, there is an end to safe and progressive trading as it is now conducted. It is given to bankers alone to realize the difficulties which may surround this department of their business, but whatever these may be, they can never constitute a reason for that bolstering up of credit which, though it may put off, not only does not remove, but invariably intensifies, the dangers of commercial disasters.

In conclusion, while bankers' advances are influenced, and should be limited, by the rate of accumulation of national savings, they, in that they accelerate this process, and therefore also the desire to employ more capital in reproductive uses, tend to maintain a steady rate of interest for the use of capital, and a more equable status of national credit. Surplus wealth compelled to go a-begging could not obtain that remunerative return which is facilitated by its employment, through the medium of banks, in a way that insures the maximum equilibrium net interest which, from an economic standpoint, should be procurable. And the fact that the rate of increase of this one item of the many that constitute financial and commercial life, during the past ten years, has been fully in proportion to the growth of the others is the final proof of its importance, and intensifies not only its peculiar progressive utility, but also the democratic tendency of banking in general.

BANKS OF THE UNITED KINGDOM

| Year | Advances | Per head of population |
|-----------|---------------|------------------------|
| 1890..... | £ 419,000,000 | £ 11 |
| 1900..... | 570,000,000 | 14 |

Perhaps the most emphatic exemplification of the "banking for the people" *régime* is the prevalence of rate-cutting and undignified competition against which many sound bankers have raised a protest. The introduction of means for obtaining business by which the old relationship of bankers to their clients is being reversed, and which has led to banks being asked to tender for accounts, is an evil which must rebound on the community at large, for the ability of banks to satisfy the requirements of the public depends very largely on their capability of earning those profits without which the principles of sound finance cannot be carried into effect. There are many contingencies, both present and future, besides current expenses and dividend payments, to be provided for out of profits. The easier the flow of possible national savings into the hands of those most likely and most capable of placing them to their best uses, the more complete will be the removal of all hindrances to the most beneficial application of the vast machine known as industrial organization.

PRIZE ESSAY COMPETITION, 1901

AWARD

The committee appointed to read the essays of competitors for prizes offered last year by the Canadian Bankers' Association report that they have awarded prizes in the order mentioned below :

SENIOR SERIES

"What is likely to be the effect on the Commerce and Trade of Canada of the industrial combinations being formed in the United States?"

1st—"Ivanhoe"—C. E. H. Morton, Merchants' Bank of Canada, Toronto.

2nd—"Iron and Steel"—H. M. P. Eckardt, Merchants' Bank of Canada, Montreal.

JUNIOR SERIES

"What is likely to be the effect of the South African war on the colonies of the British Empire?"

1st—"Pretoria"—S. E. Horsworthy, Bank of Montreal, St. John's, Newfoundland.

2nd—"Dum Spiro Spero"—H. E. Smith, Molsons Bank, Winnipeg.

JOHN KNIGHT,
Secretary

QUESTIONS ON POINTS OF PRACTICAL INTEREST*

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee:

Agreement to maintain minimum free balance—Account drawn below stipulated amount

QUESTION 452.—A Current Account bears interest at 3%, \$10,000 to be free. If the balance should run below that amount, say to \$4,000, would you consider the difference between the actual balance and the amount to be held free in the nature of a loan and charge 6% interest?

ANSWER.—Presumably the free balance is intended to represent remuneration for services of some character rendered by the bank, and what would be a fair adjustment should the balance fall below the amount agreed on would no doubt depend upon the nature of the services rendered, and the other facts of the matter.

Bill accepted by an Attorney—Right of paying Bank to require lodgment of Power of Attorney

QUESTION 453.—In reply to your Question, No. 426, you say, "On the whole the practice of attaching a power to the draft seems the proper one to follow," while in replying to Question No. 435 you say, "We think that as a matter of practice it is best that the Power of Attorney be filed at the bank at which the bill is accepted, but that it should at once send this document to the Bank owning the bill if it ever has to take legal proceedings."

Do these questions refer to the form of Power of Attorney used by banks in order to obtain acceptance of bills drawn on parties or firms located at a distance? If so, the answers would seem to conflict.

It is the practice here to attach the powers to the bills. In my own case, I add the words "as per authority attached" when accepting the drafts.

ANSWER.—The two replies referred to are perhaps not quite consistent, but the first was as to the propriety of the *attorney* retaining the Power of Attorney as evidence that in accepting the bill he had not gone beyond his powers, and the second dealt with the question whether, in case such a bill is dishonoured and returned to the owner, it should not be accompanied by the Power of Attorney.

The two questions together might be answered thus: that until the bill matures it is most convenient that the Power of Attorney should be attached to it; that it should be left attached to the bill when it goes to the paying bank; but if dishonoured it had better be retained until the owner of the bill requires its production in evidence.

Right of bank to set-off an overdue note of a deceased debtor against a deposit made by his executors subsequently to his death

QUESTION 454—A bank holds a promissory note of a deceased party. After the promissor's death his wife, having obtained Letters of Administration to his estate, causes through her agent to be deposited in the bank certain moneys in her name "Trust Account Estate of a (promissor)." Can the bank retain funds so deposited against the note, or are they bound to honour cheques drawn on this account?

ANSWER.—We think the bank cannot retain the funds deposited by the agent of the administratrix against the indebtedness of the intestate.

To be the subject of set-off debts must be mutual, and in the case put the mutuality of the debts, without which there can be no set-off, does not appear to exist—the intestate and the bank never stood in the relation of mutual debtors to each other. The debt to the bank was contracted by the intestate, but the debt of the bank was never due or owing to the intestate. The administratrix by reason of a contract between her and the bank is the bank's creditor, but there is no contractual relation between her and the bank by which she is made the bank's debtor.

We do not overlook the fact that the intestate's note fell due after his death, but we cannot conclude that this circumstance

alters the case. The intestate did and the administratrix did not contract the debt upon the note; the administratrix did and the intestate did not deposit the money in question with the bank.

Deposit in name of A B, in case of death payable to C D

QUESTION 455.—Is a deposit receipt payable to A B or in case of his death to C D legal? Would C D in case of A B's death have a clear title to the amount irrespective of any will which A. B. might make?

ANSWER.—We see no reason why the deposit receipt should be held illegal. Subject to what has been said in answer to Question 97, Volume V of the "Journal," page 332, we think that as between the Bank and C D, C D would be entitled to the amount on the death of A B. Of course, in point of fact, as between A B and C D the money might belong to one or other of them, or as between them and some stranger it might belong to such stranger. It would be open to the party really entitled in such case to advise the bank of his rights and claim the money, and in such event the safe course would seem to be for the bank, if possible, to pay the money into court or, failing that, to take interpleader proceedings.

Note payable at a branch bank—Branch closed and business transferred elsewhere—Presentment

QUESTION 456.—A note is payable at a branch of a bank at A—, but after the making and before it is due the branch at A—, is closed and the books and business are transferred to B—, at the branch of the same bank there, and the makers and endorsers know this. Presentation is made at the branch at B—, and not to the makers and endorsers personally. Is this good, and, if so, how should notice of dishonour be worded to suit change?

ANSWER.—Such a presentation is not good.

Cheque payable to A B on the endorsement of C D

QUESTION 457.—A cheque is made as follows: "Pay to A B upon the endorsement of C D." The cheque is endorsed "C D" only. Is the endorsement of A B necessary, and has the paying bank any right to refuse payment of the cheque, it being not endorsed by A B?

ANSWER.—Such a form of order in a cheque would be most unusual. The endorsement of both A B and C D should be required; otherwise the drawer should be asked for instructions.

Note bearing interest from date of note "till paid"—Rate collectible after maturity

QUESTION 458.—Referring to your answer to Question 451 I have read a decision of the courts to the effect that the words "until paid" as written in the note in question implies maturity. If so, and it was the intention that the note bear interest, at other than the legal rate, after maturity, it would be necessary to so make it read.

If I am right your answer to this question might be misleading.

ANSWER.—Doubtless the cases to which you refer as to the effect of the words "until paid," are: *St. John v. Rykert*, 10 *Supreme Court Reports*, 278, and *People's Loan v. Grant*, 18 *Supreme Court Reports*, 262. These cases were not overlooked when the answer to question No. 451 was framed. It did not seem to us that the words "until paid" would be misleading, because they would no doubt be taken to have what has been held to be their true effect. Moreover, it did not seem to us that the question was directed in any way to the significance of these words. It was asked whether there was any legal objection to a note drawn in the form in question. The presence of the words "until paid," clearly constitutes no legal objection whatever. The note with these words is perfectly valid and effectual and the courts would give to these words their full significance and effect. How they should properly be construed is another question upon which the two cases above referred to are instructive.

Notice of dishonour sent to endorser by letter

QUESTION 459.—Would notifying an endorser by registered letter that a note had not been met by his promisor and that he was looked to for payment, hold him the same as if the note had been duly protested?

ANSWER.—Any notice of dishonour properly given holds the endorsers, but in the case of bills payable in the province of Quebec, and foreign bills, protest is necessary. All that is necessary in a notice of dishonour sent by mail is that it should be "duly addressed and posted" (see section 49 (15) *Bills of Exchange Act*); registering the letter does not affect the matter.

Right of a bank to pay at a branch in Nova Scotia a deposit received at a branch in New Brunswick, under Letters of Probate issued to the depositor's executors in Nova Scotia

QUESTION 460.—A resident of New Brunswick, having a deposit in a bank in that province, moves temporarily to Nova

Scotia (where he also owns personal property), and dies there. His executor obtains Letters of Probate in Nova Scotia, and applies for payment of the deposit in New Brunswick without proving the will in that province. The deposit exceeds \$500.

1. Would the bank be justified in making payment, and
2. Would it have any protection under sub-section 3 of section 84 of the Bank Act?

ANSWER.—1. On the general principle that a creditor may seek his debtor and pay him wherever he can find him, we think a bank holding a deposit at a branch in New Brunswick may, through one of its branches in Nova Scotia, pay the executor of the depositor, who presents Letters of Probate from the Courts in Nova Scotia.

2. The case does not come under section 84, seeing that the deposit is over \$500.

Value of 30 and 90 day sterling bills based on the rate for demand and 60 day bills

QUESTION 461.—The current rate for demand sterling bills is $9\frac{7}{8}$, and for 60 days $9\frac{1}{8}$. What should a 90 day bill and 30 day bill be worth at the same time, and how would you make it out?

ANSWER.—The difference between a demand and a 60 day bill represents the interest on the money and the stamp; the latter on any bill payable on demand is 1d., while for 60 day or other term bills it is 1s. per £100, say 1-20 of 1 per cent.

The interest rate that governs is, speaking loosely, the current market rate for bankers' bills in London. This might be higher for 90 days than for 60 or 30 day bills, so that no arbitrary rule can be named, but assuming that interest rates are alike for the different terms, the rate should work out about as follows:

| | | |
|----------------------------------|---|--------------------------|
| Demand rate (on your hypothesis) | - | $9\frac{7}{8}$ per cent. |
| 60 day " " " | - | $9\frac{1}{8}$ " |

The difference of $\frac{3}{4}$ per cent. represents 1-20 stamp and 63 days' interest at about 4 per cent. per annum.

On this basis a 30 or 90 day bill would be worth as much less than demand as 33 or 90 days' interest at the above rate would amount to.

Non-trading partnership—Individual liability on paper endorsed by and discounted for the firm

QUESTION 462.—Is it necessary that a firm of solicitors should sign and register a certificate of partnership such as is required in case of a trading partnership, in order to hold them jointly and severally liable on paper endorsed by them in the firm's name, and discounted for the firm? Does section 23 (b) Bills of Exchange Act, cover this point?

ANSWER.—The registration of such a certificate is not requisite, nor would it alone, we think, have the effect of making the partners jointly and severally liable. If they desire to come under such liability the partners should each sign a declaration to that effect and lodge it with the bank, although such a declaration made in any public way would doubtless be binding.

Section 23 (*b*) which in effect makes one member of the partnership the agent of the others to bind them by use of the firm's signature, would, we think, apply only where one member can bind his partners. Ordinarily this is not true of non-trading partnerships, such as solicitors, architects and the like, but even in their case if the transaction were clearly necessary in connection with the firm's business the partners might be bound as, for instance, where a note is taken for solicitor's costs, and is discounted for the purposes of the firm.

QUESTION.—(Submitted in continuation of the above).—As your meaning in first paragraph of answer is not clear to me, I will have to beg the favor of a further explanation. The case cited in my question is that of a firm of solicitors who are in the habit of discounting notes taken in payment of costs, just as a trading firm discounts notes taken for sales of goods. In second sentence of first paragraph you say "If they desire to come under such liability, &c., they should sign a declaration to that, &c.," and in second sentence of second paragraph you say, "if the transactions were clearly necessary 'the partners *might* be bound, &c.' " I should like to know beyond a doubt, if the partners are jointly and severally liable in the premises cited.

ANSWER.—We do not think you can be certain, as you say "beyond a doubt" as to the liability of the parties, unless you have a clear proof that the partner signing had power from the others to make the firm liable for these obligations. *Prima facie* it would not, we think, be within the scope of the business of a firm of solicitors to discount paper, and the rule is that one partner binds the others only in connection with business within the scope of the partnership. Yet the question is one of fact, and if it were customary for the firm to discount paper, proof of such custom would bring the transaction within the scope of the business, and if it were proved that the firm got the benefit of the discount, as a firm, the other partners could not repudiate the liability, and at the same time retain the benefit.

Depositor operating a business account and a personal one—Right of bank to set off

QUESTION 463.—John Smith, merchant, opens a business account in his own name with the bank, and also another account

subsequently, called "personal account." The first mentioned account is overdrawn while there are funds at credit of the latter. Can the bank retain sufficient funds from the credit balance to cover his liability on the overdraft? Would the recent decision in the case of *Bank of British North America, v. Richards & Riley* have any bearing on such a case?

ANSWER.—In this case the balance in one account is due to John Smith and the balance in the other due by him. The bank therefore has a right to set off one against the other.

We do not think the British Columbia judgment has any bearing when the facts are as in this case.

Bill received for collection with "no protest" slip attached—No instructions in accompanying letter

QUESTION 464.—A bill received for collection has a "no protest" slip attached, but in the letter enclosing it no reference is made thereto. Should not the letter govern?

ANSWER.—We think not. The slip accompanying the bill should be regarded as properly sent unless the letter showed the contrary. We think the bank in the case put should be careful to return the bill before the close of business on the next day and then no interests would be injured by returning the bill without protest. The party receiving back a dishonoured bill is in a position to give notice to the prior parties and so keep everybody on the bill liable to him. This would not, however, apply to the province of Quebec, where protest is necessary.

Negotiable instruments—Form

QUESTION 465.—I. Is a document in the following form a negotiable instrument?

"Upon being endorsed by the Secretary or President of the M—
Agricultural Society this order shall be good to the bearer for
Three Dollars, which is given as a special prize to be awarded
at their annual exhibition, Fall of 1901."

(Signed)

A. B.

2. If specially endorsed to C. D., is it then payable to bearer or to the order of C. D.?

ANSWER.—I. We think that the terms in which the promise to pay is expressed are consistent with the requirements of a promissory note; but the provision that it must be endorsed by an officer of the Society before being good to the bearer makes it conditional. It is therefore not a promissory note and not negotiable in the proper sense.

2. The effect of an endorsement on an instrument of this kind is, of course, not governed by the Bills of Exchange Act, and any party handling it would have to take the chances of the endorsement proving a sufficient assignment.

Legal

LEGAL DECISIONS AFFECTING BANKERS

HOUSE OF LORDS

Dovey and others v. Cory*

The director of a company is bound to give his attention to the matters brought before him at meetings of the board, and to exercise his judgment as a man of business upon them. In the absence of ground for suspicion he is entitled to rely upon the judgment, information, and advice of the officials of the company, and is not bound to examine entries in the company's books, but is entitled to rely on the examination of those whose special duty it is to attend to such details.

It is not the function of any tribunal to formulate precise rules for the guidance or embarrassment of business men in the conduct of business affairs, but to deal with each particular case on its own facts and circumstances.

A director who attends meetings, makes enquiries, is assured by the officials that provision has been made for bad debts and believes such assurances, and examines such matters as are brought before him in the ordinary course of business, cannot be made liable in the liquidation of the company in respect of losses incurred by improper credits to directors and customers or the payment of dividends out of capital.

Semble, a company is not at liberty to write off to capital losses incurred in previous years, or in any subsequent year, and, if the receipts for that year exceed the outgoings, to pay dividends out of such excess without making up the capital account, such a procedure being inconsistent with the provisions of the Companies Act, 1877.

Observations of the Court of Appeal disapproved.

Decision of the Court of Appeal sub nom. National Bank of Wales, *In re Cory's Case*, affirmed.

Appeal from a decision of the Court of Appeal, which reversed a judgment of Wright, J. (68 L.J. Ch. 634; [1899] 2 Ch. 629).

The appellant was the liquidator of the National Bank of Wales, and the Metropolitan Bank of England and Wales had purchased and taken over its assets and liabilities. The respondent, John Cory, was for some years a director of the National Bank of Wales. In the liquidation of the latter a summons was taken out to render the respondent liable—not to creditors, all of

**Law Journal Reports*, Vol. lxx., Oct. '01.

whose claims had been satisfied, but to the contributories—in respect of alleged misfeasance—first, in paying dividends out of capital; secondly, in making improper advances to directors; and thirdly, in making improper advances to customers who were, or were reputed to be, insolvent; and the summons asked that the respondent should be ordered to repay the full amount of all losses caused by such acts of alleged misfeasance with interest and costs.

Mr. Cory became a director on November 23, 1883, and resigned on December 18, 1890. The summons asked that the respondent should be deprived of the benefit of the Trustee Act, 1888, and of the Statutes of Limitation, on the ground that the losses arose from the respondent's wrongful acts and concealment of the true state of affairs. The transactions complained of were voluminous and ranged over a series of years and related to the affairs not only of the head office, but of the branches, which in 1890 were thirty-three.

In February, 1893, an agreement was entered into between the National Bank of Wales and the Metropolitan, Birmingham, and South Wales Bank, now the Metropolitan Bank of England and Wales, Limited, whereby the latter bought the assets and goodwill and undertook the liabilities and contracts of the former, the value of the assets and goodwill being taken at not less than £110,000. Voluntary resolutions were passed for winding up the National Bank of Wales, and Thomas Cory, its former chairman, and the appellant were appointed liquidators. Thomas Cory subsequently resigned and the appellant became sole liquidator. The alleged amount of improper payments of dividends was £52,986; of loss on advances and credits to directors to December 31, 1890, £37,731; and of loss on improper advances to customers, £43,087. The whole of the assets were realized or valued, and the appellant Dovey alleged that after discharging the liabilities of the National Bank of Wales and crediting it with the value of its assets and £110,000 and its goodwill, there remained a deficiency of assets amounting to £84,392. Calls were made of £2 10s. per share each in July, 1896, and September, 1899. Wright, J., ordered the respondent to pay £54,787, being £37,000, the aggregate amount of dividends paid to the shareholders in 1887, 1888, 1889 and 1890 (except a part of the last dividend),

and as to the balance, interest at 5 per cent. on each of the dividends. The learned Judge held that all these dividends were in fact paid out of capital; but he declined to make the respondent liable for improper advances to directors or customers. The Court of Appeal exonerated the respondent from liability.

The liquidator appealed.

THE LORD CHANCELLOR (EARL OF HALSBURY).—In this case the liquidator of the National Bank of Wales appeals against a judgment of the Court of Appeal, whereby Mr. John Cory, the respondent, was discharged from the liability which Mr. Justice Wright's judgment had imposed upon him to pay £37,000 for the benefit of the shareholders of the Company, in respect of dividends already distributed, and a further sum for interest.

Mr. John Cory was a director of the company, and it is for his supposed misconduct in the management of the affairs of the company that this liability was imposed upon him. It is alleged and proved that certain losses have been sustained by the company, and the ground upon which Mr. John Cory is sought to be made liable is the very short and intelligible ground that he was a party to false and fraudulent statements as to the position of the company, and had had a share in causing these losses. The Court of Appeal have acquitted him of any knowledge of what was falsely stated, and counsel for the appellant Dovey, in opening this appeal, stated that he did not intend, in arguing for Mr. John Cory's liability, to impute to him any moral obliquity. Now, there is no doubt that there were balance-sheets laid before meetings of shareholders which, to use the language of the articles of association, were not proper and which did not truly report as to the state and condition of the company, and did not comply with the requirements of the articles in question in respect of the particular sum which the directors recommended as dividend, that it should be paid out of the profits, but a greater sum was paid out as dividend than would have been paid if certain things had been taken into consideration, and therefore larger than should have been paid.

A great part of the judgment, both of Mr. Justice Wright and of the Court of Appeal, is occupied by discussing matters which are not now before your Lordships as matters in debate. It is now admitted that Mr. John Cory ceased to be a director in December, 1890.

I am very clearly of opinion that the judgment of the Court of Appeal is right and ought to be affirmed; but my opinion is entirely based upon the question of fact that he was guilty of no breach of duty whatever, and for reasons which I will refer to hereafter I am very anxious not to deal with some reasons given

for their judgment by the Court of Appeal, which, in the view of the facts that I take, do not arise here; and in what I say I desire to be understood as only dealing with the facts of this particular case.

Now, in the first instance, I will assume that the company has sustained loss by the issue of fraudulent balance-sheets, by the improper advance of money to the customers of the bank, and that it has also sustained loss by the lending of money to directors without security. With respect to the default involving liability, if Mr. John Cory was conscious of the falsehood it is not necessary to go any further. Like any one else who is a party to a false statement acted upon to the prejudice of the person to whom it is made, he would be liable to the extent to which his falsehood has inflicted loss on his victims, but after the admission that has been made it is unnecessary to pursue this head of enquiry; he certainly could not be acquitted of moral obliquity if party to a fraudulent statement. But it is said he has so grossly neglected his duty as a director that, though he may not have known the true state of the facts, he ought to have known them, and his breach of duty in that respect renders him liable. In order to see how far this obligation is made out it is necessary to consider what the business of the company was, and what was the position of Mr. John Cory in relation to it.

I think it is idle to talk in general terms of the duty of a director to look after the concerns of the company of which he is one of the managers without seeing what in the ordinary course of business he ought to do or to have done. Now there are some things which, of course, must be, or at all events ought to be, apparent to any one responsible for the conduct of a commercial business, and that observation applies to the business of which we are speaking—namely, a banking business—but I do not understand that any one has suggested that there was neglect or default by reason of the absence of some system under which, if honestly carried out, the interests of the bank would have been in that respect secured.

It is admitted that the company's principal bank and its head office were at Cardiff, where the directors met and the general manager was in daily attendance. The company had also many branch banks each with its own manager. The course of business was this: Each branch manager sent weekly to the head office what is called a weekly state—that is, an account showing how the assets and liabilities of the branch stood, what advances or overdrafts had been made or allowed, and to whom, what securities the bank held, and other matters. Every quarter each branch manager made a more formal return to the head office showing the position of the branch and the business done during the past quarter. It was the duty of the general manager

to examine these documents, and to report to the board anything disclosed by them which required their attention. The weekly states or quarterly returns were in the board room for reference in case of need, but unless attention was called to them the directors did not think it necessary to examine them. The chairman of the directors was Mr. Thomas Cory, a brother of Mr. John Cory. The chairman and the general manager (Mr. Collins) visited each branch bank every year; and in addition, two skilled inspectors frequently went around and inspected the accounts and reported to the general manager. The accounts of the branch banks appear, however, not to have been separately audited by professional accountants. The auditors employed to examine the company's accounts, and to certify the annual balance-sheets and accounts laid before the shareholders, only saw the head office books and the returns from the branch offices certified by their respective managers to the head office. These certified returns formed part of the weekly states, but omitted much that they contained. The minutes of the directors' meetings show that, speaking generally, they attended with reasonable regularity and transacted a large amount of business. No director, unless it was the chairman, attended to any details not brought before the board either by the chairman or by the general manager. Mr. John Cory stated in his affidavit the general course of business at board meetings, and his cross-examination does not substantially differ from the account he there gives. But it is suggested that Mr. Cory is responsible because this and other portions of the system were not faithfully adhered to. And, indeed, what is really made the test of his responsibility is that he did not find out what was fraudulently withheld from his knowledge. So the warning letters of the auditor, which were never suffered to reach him, are suggested as warnings to him which he ought not to have neglected. Again, reliance is placed by the appellant on the insufficient striking out of bad and doubtful debts by which the amounts paid in dividends to himself and other directors, as well as shareholders, are by a process of reasoning and calculation assumed to be payments out of capital. These things are all assumed to have been done as though done with knowledge and intention, while at the same time the admission is made that there was no evil mind or conscious fraud.

Now I think such things, if done with evil mind and intention, would be fraud, and it comes back again to the proposition that the responsibility must be based upon the assumption that Mr. Cory is responsible because he did not find out the fraudulent knaves by whom he was surrounded. One was his own brother, another was the general manager, and once I arrive at the conclusion that there were those about him whose interest and object was to deceive him, I certainly do not think that the

things which were designedly concealed from him are things which ought to be relied upon as matters for which he was responsible. In the view I take, the whole of the evidence which is relevant and important to the question whether Mr. Cory knowingly permitted the things to be done which were done, becomes to my mind entirely immaterial if one is to start with the assumption that he knew nothing about them.

Dealing with the several heads of charge as they have been formulated in the judgment of Mr. Justice Wright—namely, negligence, breaches of trust in respect of advances made contrary to the articles of association, and payments of dividends out of capital—I think each and all of them may be disposed of by the proposition that Mr. Cory was not himself conscious of any one of these things being done, and that unless he can be made responsible for not knowing these things, and as Mr. Justice Wright put it, he is to be held thereby to have exhibited a complete neglect of the duties he had undertaken, the charges are not made out. The charge of neglect appears to rest on the assertion that Mr. Cory, like the other directors, did not attend to any details of business not brought before them by the general manager or the chairman, and the argument raises a serious question as to the responsibility of all persons holding positions like that of directors, as to how far they are called upon to distrust and be on their guard against the possibility of fraud being committed by their subordinates of every degree. It is obvious if there is such a duty it must render anything like an intelligent devolution of labour impossible. Was Mr. Cory to turn himself into an auditor, a managing director, a chairman, and find out whether auditors, managing directors and chairmen were all alike deceiving him? That the letters of the auditors were kept from him is clear. That he was assured that provision had been made for bad debts, and that he believed such assurances, is involved in the admission that he was guilty of no moral fraud; so that it comes to this—that he ought to have discovered a network of conspiracy and fraud by which he was surrounded, and found out that his own brother and the managing director (who have since been made criminally responsible for frauds connected with their respective offices) were inducing him to make representations as to the prospects of the concern and the dividends properly payable, which have turned out to be improper and false. I cannot think that it can be expected of a director that he should be watching either the inferior officers of the bank or verifying the calculations of the auditors himself. The business of life could not go on if people could not trust those who are put into a position of trust for the express purpose of attending to details of management. If Mr. Cory was deceived by his own officers—and the theory of his being free from moral fraud

assumes under the circumstances that he was—there appears to me to be no case against him at all. The provision made for bad debts, it is well said, was inadequate, but those who assured him that it was adequate were the very persons who were to attend to that part of the business—and so of the rest. If the state and condition of the bank were what was represented, then no one will say that the sum paid in dividends was excessive. If I assume, as I do, that Mr. Cory acted upon representations made to him which he believed, and coming from the officers of the bank, to whom he was, in my judgment, justified in giving credit, the discussion of whether the dividends actually paid were or were not properly divisible has no bearing on Mr. Cory's liability, and I am very reluctant to give any opinion upon it, inasmuch as the question may arise when it may be necessary to decide it. I deprecate any premature judgment.

I am, as I have said, very reluctant to enter into a question which for the reasons I have given does not arise here, and into which the Court of Appeal has entered at some length. The only reason why I refer to it at all is lest by silence I should be supposed to adopt a course of reasoning as to which I am not satisfied that it is correct. I doubt very much whether such questions can ever be treated in the abstract at all. The mode and manner in which a business is carried on, and what is usual or the reverse, may have a considerable influence in determining the question what may be treated as profits and what is capital. Even the distinction between fixed and floating capital, which in an abstract treatise like Adam Smith's *Wealth of Nations*, is appropriate enough, may with reference to a concrete case be quite inappropriate. It is easy to lay down as an abstract proposition that you must not pay dividends out of capital, but the application of that very plain proposition may raise questions of the utmost difficulty in their solution. I desire, as I have said, not to express any opinion, but as an illustration of what difficulties may arise, the example given by counsel of one ship being lost out of a considerable number, and the question whether all dividends must be stopped until the value of that lost ship is made good out of the further earnings of the company or partnership, is one which one would have to deal with. On the one hand, people put their money into a trading concern to give them an income, and the sudden stoppage of all dividends would send down the value of their shares to zero and possibly involve its ruin. On the other hand, companies cannot at their will and without the precautions enforced by statute reduce their capital, but what are profits and what is capital may be a difficult and sometimes an almost impossible problem to solve. When the time comes that these questions come before us in a concrete case we must deal with them, but until they do I for one decline

to express an opinion not called for by the particular facts before us, and I am the more averse to doing so because I foresee that many matters will have to be considered by men of business which are not altogether familiar to a court of law.

I move that this judgment be affirmed, and the appeal dismissed with costs.

LORD MACNAGHTEN.—I have had an opportunity of reading the judgment of the Lord Chancellor, and I desire to express my concurrence in it, and at the same time to guard myself from being understood to assent to all the propositions supposed to have been laid down by the Court of Appeal in this case. I say no more, because it seems to me that when counsel for the appellant Dovey withdrew all charges involving moral obliquity against Mr. Cory, the case was at an end. And I do not think it desirable for any tribunal to do that which Parliament has abstained from doing—that is, to formulate precise rules for the guidance or embarrassment of business men in the conduct of business affairs. There never has been, and I think there never will be, much difficulty in dealing with any particular case on its own facts and circumstances; and, speaking for myself, I rather doubt the wisdom of attempting to do more. I understand from Lord Shand that he also takes this view.

LORD DAVEY.—I agree in thinking that the appellant has not succeeded in making out a case for the relief which he asks against the respondent.

The appellant seeks to make the respondent liable under three heads—first, in respect of losses incurred by advances of money which he alleges that the respondent and the other directors of the bank negligently made to irresponsible persons, and without sufficient security; secondly, in respect of advances to the directors themselves, which he alleges were made contrary to the express provisions of the articles of association; and thirdly, in respect of sums paid to the shareholders (including the respondent himself) by way of dividend on their shares, which he alleges were paid out of the capital of the bank, and not out of profits. In fact, he alleges that there were no profits out of which such dividends could properly be paid, and that an apparent profit was created only by including as assets debts known to be bad and irrecoverable.

As regards the first two heads of claim, Mr. Justice Wright, as well as the Court of Appeal, has held that the claims cannot be sustained; and as I agree with the reasons which have been assigned for so holding, I need not repeat them. As regards the third head of claim, the case as presented at the Bar has been very much narrowed by the admission of the appellant's counsel that the respondent ceased to be a director in December, 1890,

and his acceptance of the decision of the Court of Appeal that the Statute of Limitations applies so as to bar the recovery of any sums paid away prior to six years before the commencement of the proceedings. The claim is thus confined to the three dividends paid in July, 1889, December, 1889, and July, 1890.

I think it appears from the evidence that in the balance-sheets upon which these dividends were recommended by the directors, bad and irrecoverable debts were in fact included amongst the assets of the company, and that if those debts had been written off (as they ought to have been), the balance-sheets would not have shown any profit out of which the dividends could have been paid. But before proceeding to discuss the evidence upon which it is sought to fix the responsibility, I will say a few words with regard to the law upon the subject with a view to ascertain exactly what it is the appellant must establish.

I need only refer to three cases which seem to me to contain the whole law upon the subject. In *Mercantile Trading Co., In re*; *Striger's Case*, the business of the company in question was of an extremely speculative and hazardous character, and the directors had paid a dividend on their estimated value of assets which were afterwards totally lost. It was held that the estimate, having been made *bonâ fide*, and without any intention to defraud anybody, a director could not be made liable, when the company was wound up, to replace the money. In *Rance's Case* Lord Romilly laid down the principle which he thought governed cases of this description, thus: "When an improper payment has been made, if it be a mere error of judgment, it cannot be recovered; if it be a fraudulent payment, then it can." The learned judge explained what he meant by a fraudulent payment: "I mean one where the person who makes it, or is concerned in making it, is at the time aware of the impropriety of making it, but does so in order to obtain a benefit for himself;" and he adds, "The director may be ignorant of this fact, but if his ignorance arises from his wilfully shutting his eyes to the facts which are before him he is equally guilty." I think that this statement of the law is very nearly but not quite accurate. In my opinion it is not necessary that the motive of the improper payment should be to obtain a benefit for the director himself. I also understand Lord Romilly to include in the expression "wilfully shutting his eyes" culpable negligence, or reckless indifference by the director in the performance of his duties. Lord Romilly decided that case in favour of the director. The Court of Appeal took a different view of the facts from that taken by Lord Romilly, and held that the directors in the preparation of the so-called balance-sheet had not followed the directions in their articles of association, and the balance-sheet did not in fact purport to show a profit out of which a dividend could be paid. In such a case there could be

no doubt of the liability of the director who took part in the payment of the dividend. The case of the *Leeds Estate, &c., Co. v. Shepherd*, before Mr. Justice Stirling, was a case of the same description. The directors had not followed the directions contained in the articles of association. The learned Judge, in the course of his judgment, states the law thus: "It seems to me that the views expressed by the learned judges who decided *Rance's Case* are consistent with the proposition that directors who are proved to have in fact paid a dividend out of capital fail to excuse themselves if they have not taken reasonable care to secure the preparation of estimates and statements of account such as it was their duty to prepare and submit to the shareholders, and have declared the dividends complained of without having exercised thereon their judgment as mercantile men on the estimates and statements of account submitted to them." I agree in this statement of the law, and I do not think it inconsistent with that of Lord Romilly, properly understood, and subject to the observation which I have already made upon it. It is by this standard that the conduct of the respondent must be judged in this case.

The respondent, in his affidavit, states generally that he was, from first to last, under the honest and genuine belief that the affairs of the company were in a sound and solvent condition, and that its business was being carried on at a profit, and that its net profits for the time being were amply sufficient to justify the dividends which were from time to time, during his directorship, paid to the shareholders. And he adds that the general manager and branch managers were, so far as he knew, men of unquestioned competence and integrity, and that he and his co-directors were compelled by the magnitude of the business and the exigencies of the case generally, to rely upon (and he did rely upon) these officials in all ordinary matters relating to the accounts of customers and other questions of detail. And he deals specifically with the various matters alleged in the liquidator's evidence on the same lines. The respondent was cross-examined on his affidavit at great, but not unnecessary, length. I am not, I think, doing injustice to the appellant's case when I say that reliance was chiefly placed on the "weekly states" and "quarterly returns" made by the branch managers, and that if he cannot succeed in fixing the respondent with liability on these documents his case fails. These returns were laid on the table in the board room at each meeting of the directors. The comparative analysis of them, made by the skilled accountant who advises the appellant, does, I think, show that certain accounts which were treated as good by the general manager in the preparation of the balance-sheets submitted by him to the directors were, in fact, irretrievably bad, and it is

difficult to acquit the general manager of improper conduct in including them as assets. The respondent says, in his affidavit, that the "weekly states" consisted each week of a very large and voluminous pile of sheets, which it would have taken the directors a couple of days to go through, and that it was the duty of the general manager to go through the weekly states, with the letters of the branch managers accompanying them, and to place upon the agenda any points arising upon them which he considered ought to be brought to the attention of the directors—and upon the discussion of such points the documents were, when necessary, referred to; but, except in such cases, the weekly states were not consulted by the directors, but they relied on the general manager going carefully through them and drawing their attention to any matter requiring their consideration. On cross-examination he adhered to this statement. He added that the chairman also went through them often individually, and he did so for the board. He admitted that, before recommending a dividend, he did not look at all the accounts or look at the books themselves, but he said that the directors looked at the documents which were put before them by the manager—the amount which he considered was doubtful and bad—and they made a reserve for it. He also said that it was never brought before him that amounts due from bankrupt debtors were included in the balance-sheet of each year, and he never heard of any single case of that kind. It further appeared, from the evidence of other witnesses, that the branches of the bank were regularly visited and their books examined by the chairman and two inspectors.

In this state of the evidence, I ask whether the course of business at the board meetings, as described by the respondent, was a reasonable course to be pursued by the respondent and other directors, or whether the knowledge which might have been derived from a careful and comparative examination of the weekly states and quarterly returns from the different branches of the bank ought to be imputed to the respondent? or (alternatively) whether he was guilty of such neglect of his duty as a director as would render him liable to damages? I do not think that it is made out that either of the two latter questions should be answered in the affirmative. I think the respondent was bound to give his attention to and exercise his judgment as a man of business on the matters which were brought before the board at the meetings which he attended, and it is not proved that he did not do so. But I think he was entitled to rely upon the judgment, information and advice of the chairman and general manager, as to whose integrity, skill and competence he had no reason for suspicion. I agree with what was said by Sir George Jessel in *Wincham Shipbuilding & Boiler Co., In re Hallmark's*

Case, and by Mr. Justice Chitty in *Denham & Co., In re*, that directors are not bound to examine entries in the Company's books. It was the duty of the general manager and (possibly) the chairman to go carefully through the returns from the branches, and to bring before the board any matter requiring their consideration, but the respondent was not, in my opinion, guilty of negligence in not examining them for himself, notwithstanding that they were laid on the table of the board for reference. The case is no doubt one of some difficulty, but the appellant has not made out to my satisfaction that the respondent wilfully, as that term is explained in the cases I have referred to, misappropriated the company's funds in payment of dividends.

What I have said is sufficient for the decision of this appeal. But I desire to express my dissent from some propositions of law which were laid down in the Court of Appeal, and upon which this house thought it right to hear the respondent's counsel. The learned judges seem to have thought that a joint-stock company, incorporated under the Companies Acts, may write off to capital losses incurred in previous years, and may in any subsequent year, if the receipts for that year exceed the outgoings, pay dividends out of such excess without making up the capital account. If this proposition be well founded, it appears to me a company whose capital is not represented by available assets need never trouble itself to reduce its capital, with the leave of the Court and subject to the other conditions imposed by the Act of 1877, in order to enable itself to pay dividends out of current receipts.

It may be that I have misapprehended the statement of law intended to be made by learned judges in the Court of Appeal. I think that is possible, because I find that in *Verner v. General and Commercial Investment Trust* Lord Lindley says: "Perhaps the shortest way of expressing the distinction which I am endeavouring to explain is to say that fixed capital may be sunk and lost, and yet that the excess of current receipts over current payments may be divided, but that floating or circulating capital must be kept up, as otherwise it will enter into and form part of such excess, in which case to divide such excess without deducting the capital which forms part of it will be contrary to law."

I reserve my opinion as to the effect of an actual and ascertained loss of part of the company's fixed capital, as in the case put by counsel for the respondent of a loss of a ship uninsured. But, subject to this observation, I think that the statement of law in the passage I have quoted is not open to objection, and it is only because the learned judge appears to me to have departed from it in his judgment in the present case that I have troubled your Lordships with these remarks.

I agree that the appeal should be dismissed.

LORD BRAMPTON concurred.

Appeal dismissed.

COURT OF APPEAL, ENGLAND

Gordon v. London City and Midland Bank (Limited)—Gordon v. Capital and Counties Bank (Limited)*

Where a banker has received from a customer a crossed cheque drawn upon another bank and has placed the amount thereof to the customer's credit, and subsequently is paid the amount thereof by the bank on which it is drawn, he does not receive such payment for the customer, and therefore is not protected by section 82 of the Bills of Exchange Act, 1882, where the endorsement is forged.

A draft drawn by one branch of a bank upon another branch of the same bank is not a "cheque" within the definition in sections 3 and 73 of the Act, and is not therefore within the protection of section 82.

Decision of Bucknill, J., reversed.

GORDON V. LONDON CITY AND MIDLAND BANK (LIMITED)

This was an application by the plaintiff for judgment or a new trial in an action tried before Mr. Justice Bucknill and a special jury at Birmingham. There was also an appeal by the plaintiff from the judgment of the learned judge on further consideration. The following facts are taken from the judgment of the learned judge, together with his decision in law upon them: The action was brought to recover damages for conversion by the defendants of 116 cheques, the property of the plaintiff; or alternatively for £2,067 16s. 11d., money received by the defendants for the use of the plaintiff. The facts, which were either admitted or proved, were these. The plaintiff who carried on business in Birmingham under the style of Gordon and Munro, had employed one Alfred Jones for about ten years as a ledger clerk, whose duty it was to take the business letters from the letter-box daily and place them on the plaintiff's desk. When customers remitted cheques to the plaintiff it was his (the plaintiff's custom to enter the same in his cash-book and pay them into his bank, but when he was absent from business Jones was authorized to open the letters and to put on one side all cheques and remittances until the plaintiff returned. Jones had no authority to endorse any cheques in the plaintiff's name, or to deal with them in any way. Between August, 1895, and February, 1899, Jones stole from letters which had been received through the post at the plaintiff's office a great number of cheques and, having endorsed them in the name of his employer, took

**The Times Law Reports*, Vol. xviii., p. 157.

them to the defendants, who had a branch at Sparkbrook, Birmingham, where Jones, who carried on business on his own account as "Jones & Co.," had an account, One hundred and sixteen cheques were so paid in by Jones. The amount for which the cheques were made payable was \$2,067 16s. 11d. They were all made payable to "Gordon and Munro." It was proved at the trial that the account of Jones as "Jones and Co.," was in credit from July, 1895, until November, 1897. In October, 1898, Jones took a partner into his business, and a new account was opened with the defendants, at the same branch, in the name of "Jones, Blackham and Co." The practice of the defendants with regard to all cheques paid in by Jones was as follows:— When Jones brought the cheques to the bank with the forged name of "Gordon and Munro" endorsed thereon he added also, either voluntarily or at the request of the defendants, the name of Jones and Co., or Jones, Blackham and Co., as the case may be. So soon as the cheques were received by the defendants they were placed to his credit, and at the same time the defendants crossed the cheques (whether they were crossed before or not) by stamping them "The London and Midland Bank (Limited), Sparkbrook, Birmingham, to Head Office, London," the object and effect of which was to make them payable to or through the head office only. The cheques were then collected by the ordinary book-keeping process of debit and credit at the head office and the amount placed to the credit of the Sparkbrook branch. At the trial the jury found that the payment in of the cheques in question by Jones was not made in such circumstances as to put the defendants on enquiry, and they added the following rider:— "We wish to express our opinion that more care is desirable on the part of banks in general in respect of cheques of this character." Mr. Justice Bucknill, after reciting the above-mentioned facts, referred to the cases of *Maclean v. Clydesdale Banking Co.*, *National Bank v. Silke*, *Great Western Railway Co. v. London and County Bank*, and held that all the stolen cheques were received by the defendants from Jones as his agents to collect on his behalf, and that they received the amount on collection for his benefit and not on their own account. In dealing with the various descriptions of cheques his Lordship held that the plaintiff could recover the value of such of them as were drawn

on other banks than the defendants in favour of "Gordon and Munro or order," and which were when paid in, uncrossed, the defendants not being protected by section 82 of the Bills of Exchange Act, 1882, as decided in *Bissell v. Fox*. His Lordship held that the plaintiffs were also entitled to recover the value of a cheque payable to "Gordon and Munro or bearer" not drawn on defendant's bank and uncrossed when received by them, his Lordship holding, on the authority of *Fine Art Society v. Union Bank of London* and *Kleinwort, Sons & Co. v. Compagnie Nationale d'Escompte de Paris* that the defendants had converted it to their own use. As to the remainder of the cheques, his Lordship came to the conclusion that the defendants were protected as to some of them by the provisions of section 60 of the Bills of Exchange Act, 1882, they having paid them in good faith and in the ordinary course of business; and as to the others, by the provisions of section 82 of the same Act, as explained in *Clarke v. London and County Banking Company*. His Lordship, after stating that the defendants had paid into court £110 in respect of the cheques which the plaintiff had recovered £114 in respect of, said that in his opinion the defendants had substantially succeeded in the action, and gave judgment for the defendants with costs.

The plaintiff now applied for judgment or a new trial.

At the conclusion of the arguments, the Master of the Rolls said that they would now hear the appeal in the next case.

GORDON V. CAPITAL AND COUNTIES BANK (LIMITED)

The facts of this case were very similar to those of the preceding case, except that Jones paid the cheques in this case into the Capital and Counties Bank, and there was no evidence that the defendants insisted on his putting his endorsement on the cheques so paid in, though he in fact endorsed them.

The Court allowed both appeals.

The Master of the Rolls said that these two cases raised questions of considerable difficulty and complication. The plaintiffs, Messrs. Gordon and Munro, had a clerk named Jones. Jones opened an account, in the first case, at the defendant bank, the London City and Midland Bank, and after opening that account he began a series of dealings with cheques made payable

to Gordon and Munro, in most instances to their order, which came into his custody as their clerk. He took the cheques into his own possession, he forged the signatures of his employers on the back of the cheques, and took them to the bank, having in the majority of instances first crossed them. The bank thereupon credited him with the amounts in his account, and he drew on his account as and when he required money. The evidence showed that during two years Jones' account would have been in debit if it had not been for these cheques. The plaintiffs, as the true owners of the cheques, brought this action against the defendants for conversion, and the question was whether the defendants were protected from liability by any of the provisions of the Bills of Exchange Act. The cheques were drawn in different ways, but the great majority of them were drawn by persons on banks other than the defendant bank, and were drawn to order, and at the time that they were paid into the bank were crossed, and also bore the endorsement of Jones. Two questions were left to the jury—first, whether there was anything in the circumstances of the case which ought to have put the defendants on enquiry; secondly, whether the defendants had been guilty of negligence. The jury answered the first question in favour of the defendants—viz., that there was nothing to put them on enquiry, and they were not asked to answer the second question. The case was fairly summed up by the learned judge, and there was no ground whatever for disturbing the verdict. He now came to the question of law. Section 24 of the Bills of Exchange Act enacted that where a signature on a bill was forged or unauthorised the forged or unauthorized signature was wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto could be acquired through or under that signature. The defendants sought to protect themselves against the effect of that section by relying on the provisions of section 82, which enacted as follows: "Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment." To begin with, it was clear that with regard to all other cheques except those which were crossed the defendants were unprotected. The legislation in respect of crossed cheques, by enacting that such cheques should not be paid except to a banker, threw upon bankers the duty of collecting and receiving payment of all such cheques, and at the same time it gave them protection against the liability they might incur in such collection and receipt of payment. The evidence showed that in many cases the defendants received cheques which were drawn on other

banks and were crossed, and that they credited Jones with the amounts without waiting to see whether they would be paid or not, and that in most instances they insisted on having, and in fact had, Jones' own endorsement on the cheques. In all those cases they were outside the protection of section 82. Where they took Jones' endorsement there could be no question about it, for they thereby became holders for value with a right of action against the drawers, and what they had done was altogether outside the necessities of collection. But he preferred to rest his decision on the larger principle that the protection of the section was limited to what was necessary for the purpose of carrying out that duty which the Legislature had imposed on bankers. The defendants here chose to treat these cheques as cash before they carried them to their destination, and they credited the customer with them at once as if they were cash. This was not a case of receiving payment for a customer but for themselves. He should have held the law to be so if the matter had been free from authority. But the decided cases all supported his view. He referred to *Matthiessen v. London and County Bank*, *Bissell v. Fox*, *Great Western Railway Company v. London and County Banking Company*, *Clarke v. London and County Banking Company*. Unless the defendants came strictly within the terms of the section which gave protection they were unprotected. But in giving their customer credit for the amount of the cheques immediately they were paid in they did something which was outside the section. The giving credit could not assist them in collecting the cheques. The authorities clearly showed that the giving of credit in account constituted the bankers holders for value. That decided the main point in both cases in favour of the plaintiffs. There were also some subsidiary points. There were a number of cheques which were not crossed when they were presented to the defendants, but were afterwards crossed by the defendants themselves. It was true that the Bills of Exchange Act allowed a banker to cross a cheque himself, but that did not apply here, for here the defendants began by dealing with a cheque which was not within the protection of section 82, and they did not purge the conversion by afterwards trying to collect it. The plaintiff succeeded on that point also. Then there were some cheques drawn payable to bearer. With regard to these, Mr. Lawrence, on the part of the plaintiffs, conceded that they could not succeed, the defendants being protected by section 31. Then there was a draft drawn by one of the defendants' branch banks on another branch. Mr. Lawrence contended that this was not a cheque within the Act, and therefore outside the protection. Inasmuch as it was not drawn by one person on another, he was of opinion that it was not a cheque. Then there were some cheques which were drawn in the same way as those he

had dealt with under the main point, with the addition that they were marked "not negotiable." The only use which had been made of this difference was that it afforded an additional ground for drawing the inference that the dealing with these cheques was outside section 82. As both appeals succeeded in the main, they would be allowed in each case with costs.

The Lords Justices delivered judgment to the same effect.

COURT OF APPEAL, ONTARIO.

Kirkpatrick v. Cornwall Electric Street Railway Company (Ltd.)
Bank of Montreal v. Kirkpatrick.*

An electric street railway company incorporated under the Ontario Joint Stock Companies Letters Patent Act, R.S.O. 1887 ch. 157, and subject to the provisions of the Street Railway Act, R.S.O. 1887 ch. 171, gave to trustees for holders of debentures of the company a mortgage upon the real estate of the company, together with all buildings, machinery, appliances, works and fixtures, etc., and also all rolling stock and all other machinery, appliances, works, and fixtures, etc., to be thereafter used in connection with the said works, etc. The by-laws of the directors and shareholders (who were the same persons and only five in number) authorizing the giving of the mortgage directed it to be given upon all the real estate, plant, franchises, and income of the company, and the debentures stated that they were secured by mortgage of the real estate, franchises, rolling stock, plant, etc., acquired or to be acquired :—

Held, that sec. 38 of R.S.O. 1887 ch. 157 does not restrict the power of mortgaging to the existing property of the company and that a company is invested with as large powers to mortgage its ordinary after acquired property as belong to a natural person; that the mortgage in terms covered after acquired property, and even if not authorized in this respect upon a strict reading of the by-laws had been acquiesced in and ratified and was binding.

Judgment of a Divisional Court affirmed.

Held also, that the rolling stock, poles, wires, etc., formed an essential part of the corpus of what must be regarded as an entire machine, and were therefore fixtures and not seizable under execution to the prejudice of the mortgagees.

Judgment of Armour, C.J., affirmed.

The first of these actions was brought for foreclosure of a mortgage given by an electric street railway, and the defendants, the mortgagors, and certain of their execution creditors, contended that after acquired property was not included in it. The second action was an interpleader issue between the execution creditors and the mortgagees, the chief question being whether the company's rolling stock was seizable under execution or was protected by the mortgage. The facts are stated in the judgments.

**Ontario Law Reports*, Vol. II., page 1. Reported by R. S. Cassels.

Appeals by the defendants from the judgment of a Divisional Court in the first action, and from the judgment of Armour, C. J., in the second action, were argued before Osler, McLennan, Moss, and Lister, JJ.A., and Street, J., on the 28th of September, 1900.

May 14. The judgment of the Court was delivered by OSLER, J.A. :—

KIRKPATRICK V. CORNWALL ELECTRIC STREET RAILWAY CO.

This is an appeal by the defendants from the judgment of a Divisional Court affirming the judgment at the trial in a foreclosure action.

The principal defendants are an electric street railway company, incorporated by Letters Patent, dated the 26th March, 1896, under the Ontario Joint Stock Companies Letters Patent Act, R.S.O. 1887, ch. 157, subject to the provisions of the Street Railway Act, R.S.O. 1887, ch. 171.

The other defendants, the Bank of Montreal and C. B. Hosmer, are said to be shareholders in and also execution creditors of the company.

The plaintiffs are mortgagees of the company and a mortgage dated the 17th June, 1896, made to them as trustees for the holders of the bonds or debentures of the company.

The debentures were issued and the mortgage given under authority of a by-law passed by all the shareholders of the company at a meeting of shareholders held for that purpose on the 16th June, 1896, and of another by-law previously passed on the same day by all the directors of the company, providing for the issue of debentures of the company to the amount of \$100,000, payable in twenty years from the date thereof, to be secured by a first mortgage to be given by the company upon all their real estate, plant, franchises and income to the plaintiffs as trustees for the debenture holders for the purpose of securing repayment of the debentures with interest.

The directors of the company were five in number, and they were when the by-laws were passed and the debentures issued and the mortgage given, the only shareholders in the company.

The debentures, 100 in number and for \$1,000 each, bear date the 20th July, 1896. Each debenture recites that all are secured by the mortgage of the 17th June, 1896, given to the plaintiffs as trustees, and conveying to them by way of mortgage the real estate, franchises and railway of the company constructed or acquired, or thereafter to be constructed or acquired, and extensions thereof, its tolls and revenues, stations, shops, rolling stock and plant acquired or to be acquired by the company. The mortgage recites, *inter alia*, the directors' by-law and its sanction by the shareholders, and grants to the mortgagees several speci-

fied parcels of land in the town and township of Cornwall, together with (a) all buildings erected upon the firstly thereinbefore described mentioned (*sic*) lands and premises, and the engines, condensers, boilers, pumps, generators, pipings, beltings (rolling stock), and all other machinery, appliances, works and fixtures used and connected with the said works; and also (b) all the buildings, erections and fixtures upon the fourthly described lands and premises, together with all rails, rail beds, ties, intersections, sidings, poles, span wires, insulators, and trolley wires owned by the mortgagors and laid down by them in and through certain streets in the said town and township of Cornwall and in and upon certain private properties connected with their said route of railway for the purpose of connecting said properties with their said route; and also (c) all engines, boilers, condensers, pumps, generators, pipings, beltings (rolling stock), and all other machinery, appliances, works and fixtures to be thereafter used in connection with the said works; and also (d) all rails, railbeds, ties, intersections, sidings, poles, span-wires, insulators and trolley wires which might be thereafter placed or used in connection with the business of the mortgagors in and upon the thereinbefore described lands and premises or any part thereof, or in or upon any streets in the said town and township of Cornwall, and the appurtenances or any part thereof or in any wise connected or appertaining to the works on the premises aforesaid; and also all the right, title and interest of the said mortgagors of, in and to certain franchises granted by the municipal corporation of the town and township of Cornwall to W. R. Hitchcock, and now held by the said mortgagors, and all renewals and extensions of the said franchises which might thereafter be granted or extended.

The franchises referred to are the licenses or grants of authority by the municipal corporations of the town and township, under the provisions of the Street Railway Act, to Hitchcock and his associates or any company formed by them to carry out the proposed undertaking to construct, maintain and operate a street railway along the streets of the municipalities.

Pending the action on the 31st January, 1899, possession of the mortgaged premises was delivered by the company to the debenture holders, the Sun Life Assurance Company, who are now in possession managing the railway.

After the argument in the Divisional Court of the motion against the judgment at the trial, a question arose as to the power of the Court to order foreclosure or sale of the property mortgaged by a street railway company, and on 30th April, 1900, this difficulty was removed by an Act of the Provincial Legislature, 63 Vict. ch. 32, sec. 1 of which provided that every mortgage made by any company incorporated under or subject to the provisions of the Electric Railway Act or of the Street Railway

Act, whenever the deed creating such mortgage incumbrance might have been executed, might be enforced by judgment for foreclosure or sale in the same manner and to the same extent as such mortgage could be so enforced if the same had been made by a company not incorporated for any public purpose.

On the 16th May, 1900, judgment was given by the Divisional Court varying the judgment at the trial by striking out the order for payment of the mortgage money and directing foreclosure of the mortgaged premises in default of payment. The judgment contained special directions as to taking accounts, not necessary to be referred to here, and directed that the Bank of Montreal and C. R. Hosmer should be made parties defendants, they appearing by counsel and consenting thereto, and to be bound by the judgment pronounced at the trial as varied by the Divisional Court and by all the proceedings as if they had been made parties in the Master's office in an action for foreclosure, etc.

On the appeal it was objected: (1) That it should have been expressly declared by the judgment that the mortgage only comprised and included such real and personal property of the company as was in existence at the time of its execution and of the passing of the by-law, and did not cover after acquired property.

(2) That the company had no power under the Acts to mortgage after acquired property, and even if they had, that the by-law under the authority of which the mortgage purported to be given did not authorize a mortgage thereof.

(3) That the by-law only authorized the company to mortgage its real estate and plant, franchise and income, and that there was no power thereunder to mortgage the rolling stock, which was no part of the plant.

(4) That there was no power to mortgage the franchise of the company.

There is, in my opinion, no foundation for this appeal, and the judgment should be affirmed for substantially the same reasons as those given by the learned Chief Justice of the Common Pleas Division.

I think we are not shut up to so narrow a construction of sec. 38 of R.S.O. 1887, ch. 157, as the defendants seek to place upon it. The powers conferred by the section are very wide: (1) The directors are authorized under the sanction of a by-law of the shareholders to borrow money upon the credit of the company (sub-sec. 1); and (2), under the like sanction, to hypothecate, mortgage, or pledge the real or personal property of the company to secure any sum or sums borrowed for the purposes thereof (sub-sec. 2).

To borrow for the purposes of the company and to mortgage the company's property to secure the lender are, therefore, *intra vires* the company, and there is nothing in the Act which

expressly or by implication restricts the exercise of the power to its then existing property. In this respect it seems to me that the company is invested with as large powers to mortgage its ordinary after acquired property as belong to a natural person: Brice on *Ultra Vires*, 3rd ed., p. 238, *In Re Dublin Drapery Company*, 13 L.R. Ir. 174; *Tailby v. Official Receiver*, 13 App. Cas. 523; *Philadelphia, etc., R. W. Co. v. Woelpper*, 64 Pa. St. 366; *Anderson v. Butler's Wharf Company*, 48 L.J. ch. 824.

The inconvenience of a different construction is forcibly pointed out in the judgments below, and it ought not to be adopted, unless the language of the section is such as to render it inevitable, as it is obvious that it would tend to hamper the operations of the company and prevent it from obtaining the necessary means for the construction and equipment of its works.

The terms of the mortgage, as well as of the debentures, if it were necessary to refer to the latter (*see Brown, Shipley & Co. v. Commissioners of Inland Revenue*, 2 Q.B. 598), in express terms include, future acquired property of the character described. In form, therefore, the instrument is unexceptionable. It is said, however, that it exceeds the powers conferred by the shareholders' by-law, and is therefore, to that extent, inoperative. I do not think that is a necessary consequence. If it were legitimate to regard the intention of the parties for the purpose of construing the instrument, it would be a fair inference from the facts proved, and particularly the fact that the contract for the construction and equipment of the road had only recently been made, that the future property was intended to be mortgaged. It was an essential part of the security offered to the intending purchasers of the debentures. The object of the loan was to enable the company to complete the road and to procure the rolling stock and other plant necessary to operate the railway, and the existing property of the company was a wholly insufficient security. These are facts which cannot be overlooked in determining the question of ratification or acquiescence. The mortgage being *intra vires* the company, it may be well supported on either of these grounds, even although the directors may have exceeded to some extent the limit of their own powers: *Phosphate of Lime Co. v. Green*, L.R. 7 C.P. 43; Brice on *Ultra Vires*, 3rd ed., pp. 624-627.

There were but five shareholders who, as I have said, composed the entire directorate, and it is in my opinion clearly to be inferred not only that the mortgage was given with the actual assent of all and with a full knowledge of its terms, but also that it was subsequently ratified and acquiesced in by the acts and conduct of the company and its shareholders.

It does not seem necessary to make any declaration in the judgment, as the defendants or some of them ask us to do,

expressly restraining it to the property charged or specifying the property foreclosed. That, for the present, is sufficiently done by the terms of the judgment as entered.

It is said that the railway is, in part, constructed upon a parcel of land of which the company had only a lease for a term, and upon another parcel of land for which it had only an agreement for sale, which has been rescinded or in some other way put an end to.

These two parcels are not included in the mortgage, but they are not the subject of enquiry in this action. We cannot take cognizance of them or make any order in respect of them. No doubt those who intend to operate the road in the future will provide for their own interests therein.

We are of opinion that the judgment in the foreclosure action should be affirmed as entered and the appeal dismissed with costs.

BANK OF MONTREAL V. KIRKPATRICK.

This was an interpleader issue between the execution creditors, defendants in the former case, and the trustees and debenture holders, the plaintiffs in that case. The execution creditors appeal from the judgment of Armour, C.J., in favor of the latter, setting up the same objections to the mortgage as those which have been dealt with in the judgment just delivered in the foreclosure suit, and the further objection that the property mortgaged, other than the land specifically described, is personal property liable to the executions not being covered by any duly registered chattel mortgage. As regards the poles, rails and wires of every description used by the company in operating its railway, whether they are erected or laid on or in the lands of the company or the streets of the municipalities, or in lands the title to which is no longer in the company, they form part of the land, and the land either not being exigible or else covered by the mortgage to the trustees, the rails, poles and wires thereon are equally exempt, not being severable therefrom for the purpose of the executions: *In re Toronto Railway Company Assessment*, 25 A.R., 135; *Consumers Gas Company v. Toronto*, 23 A.R. 651; S.C., 27 S.C.R. 453.

The chief item in dispute under this head was the rolling stock of the company. The learned trial Judge held that it was an essential part of the railway, the latter being useless for any purpose without it, and therefore that it was real property covered as such by the mortgage.

The question whether the rolling stock of an ordinary steam railway company is to be regarded as personal property and liable as such to be taken in execution, has not, that I am aware of, been the subject of decision in the courts of this Province.

In the courts of the United States the decisions are numerous and diverse, the weight of authority being rather in favor of the position that the rolling stock is personal property: Wood's Railway Law, vol. 2, sec. 290; vol. 3, sec. 466; Redfield on Railways, vol. 2, p. 646 (n) *Hoyle v. Plattsburgh, etc., R. W. Co.*, 54 N.Y. 314; *Neilson v. Iowa Eastern R. W. Co.*, 51 Iowa 184; *Coe v. Columbus, etc., R. W. Co.*, 10 Ohio St. 372.

In the Province of Quebec "it is a well-established jurisprudence that the rolling stock of a railway is immovable property and part of the freehold," *per* Taschereau, J., in *Wallbridge v. Farwell*, 18 S.C.R., at p. 20; *Grand Trunk Railway Co. v. Eastern Townships Bank*, 10 L.C. Jur. 11; the railway itself being an immovable, its rolling stock is immovable from destination.

In England it is now expressly provided by legislation that the rolling stock and plant used and provided by a railway company for the purpose of traffic on its railway is not liable to be taken in execution at law or in equity: 30 & 31 Vict. ch. 127, sec. 4; and see also 35 & 36 Vict. ch. 50, which protects hired rolling stock from distraint.

Shortly before the Act of 1867 was passed, the case of *Blackmore v. Yates*, L.R. 2 Exch. 225, was decided. That was an interpleader issue between the mortgagee of rolling stock and an execution creditor of the railway company, who had seized it under his execution. No point was made as to the nature of the property. The only question seems to have been whether the transfer of the whole of this rolling stock by the company to the plaintiff was not *ultra vires* and invalid. The Court, without pronouncing any opinion on the right of a railway to make such a transfer under all circumstances while the railway was in operation, held that, under the circumstances of the particular case, "they had the same right to give the rolling stock to the plaintiff, who, upon obtaining it, forewent the judgment he would otherwise have obtained (the mortgage having been given in compromise of an action), as the defendant would have had to take it in execution if it had been left untransferred on the company's line;" or, as Martin, B., put it: "As between these two creditors, the plaintiff had as good a right to the rolling stock as the defendant."

In *Yorkshire Railway Waggon Company v. Maclure*, 21 Ch. D. 309, a railway company having no power to borrow, yet needing money, sold their rolling stock to the plaintiff, and then took a lease of it for a term of years at a rent which in five years would repay the price and interest, when it was to be re-conveyed to them for a nominal sum. It was contended that this was in reality a mere mode of borrowing—a device to evade the Act—and further, that the company had no more power to sell the

rolling stock, which was necessary for the carrying on of the undertaking, than to sell the railway itself. The Court of Appeal held the transaction to be in reality a sale. Jessel, M.R., said (p. 316), "Would it be against the terms of the Act of Parliament (*i.e.*, the Company's Act, which prohibited borrowing except in a particular way) for them to sell the rolling stock of the company? It does not appear to me to be so. Would it be reasonable to say that they could not sell the rolling stock? It does not appear to me that there is any analogy to the case of land. One never heard of a man who sold his furniture to pay his debts represented as borrowing money to pay them. It is paying the debts not by borrowing money but by disposing by way of sale of his chattels." See also Booth on Street Railway Law, sec. 422.

So far as any inference is to be drawn from what is said in the above cases and from the Imperial legislation, it is in favour of the view that, in the case, at all events, of an ordinary steam railway, rolling stock is personal property, and, as such, exigible in execution. There may be reasons founded on public policy why it should not be so in the case of railways for the construction or maintenance of which public moneys have been granted, and which may, therefore, be said to be public undertakings the efficient carrying on of which ought not to be interfered with by the seizure of their personal property necessary for that purpose, any more than by the seizure and sale of their lands and buildings; *Peto v. Welland R. W. Co.*, 9 Gr. 455; *King v. Alford*, 9 O.R. 643; Jones on Railroad Securities, sec. 158.

It is not, however, necessary at present to express an opinion as to the nature or character of the rolling stock of an ordinary railway. There are, no doubt, reasons of convenience why it should be held to be part of the freehold of the railway, or, at all events, not liable to be taken in execution, but such reasons alone would invite legislative action not judicial declaration. Reasons from analogy to the case of other articles which have been held to be fixtures are, indeed, not wanting in support of the view that the engines and cars of a railway ought to be so held as the learned Chief Justice below has forcibly pointed out, and these would seem to be the very reasons why, in the Province of Quebec, rolling stock is held to be part of the realty. I quote a passage from the judgment of Drummond, J., in *Grand Trunk Railway Company v. Eastern Townships Bank*, 10 L.C. Jur. 11, at p. 15: "The locomotive engine seized as a movable is in fact an integral part of the immovable property constituting the Grand Trunk Railway. It is to all intents and purposes part of the realty, *un immeuble par destination*, and is no more liable to seizure, apart from the immovable property to which it belongs, than the detached

burrstones in a mill, the vats in a brewery, or the boilers in a sugar factory."

All the reasons which can be advanced in favour of treating rolling stock of an ordinary railway as part of the freehold apply with great force to the case of the electric railway, and there are others arising out of the peculiar character of a road of that description which appear to me to justify us in regarding it as *sui generis*, and relieve us from any embarrassment which might otherwise be caused by the cases which I have referred to. While the rolling stock of the ordinary steam railway may be hauled by a locomotive resting by its own weight and generating its own power over the lines of many different companies, to none of which it belongs, and thousands of miles from its home, that of the electric railway really constitutes, as was argued, part of one great machine, confined to a particular locality, for which it is specially constructed and fitted; operated by means of a continuous current of electricity generated in part of the fixed plant in the power house, and passing through the trolley pole of the car, which is fitted to the overhead wire, through the car to the unbroken line of rails back to the generator. Of the entire machine thus operated, important parts, the rails and the power house, are unquestionably realty, and the rolling stock forms part of it in a much more intimate and connected manner than does the rolling stock of the steam railway. Detached from the rails it is incapable of use, and upon the principles laid down in *Place v. Fagg*, 4 M. & Ry. 277; *Fisher v. Dixon* 12 Cl. & Fin. 312; and *Mather v. Fraser*, 2 K. & J. 536, I am of opinion that, as regards its liability to be taken in execution, it may properly be regarded as part of the *corpus* of the entire machine, and therefore in the nature of a fixture, and passing with the land over which it runs.

The same considerations apply to the other parts of the property which have been held by the judgment to be the property of the mortgagees as against the execution creditors.

Upon the whole, therefore, I think the judgment should be affirmed, and the appeal dismissed with costs.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

| Quarter ending 30th September— | | 1900 | | 1901 | |
|--------------------------------|-------|------------------|--|-------|-----------------|
| Free | \$ | 17,951 | | \$ | 17,817 |
| Dutiable | | 27,960 | | | 29,207 |
| | \$ | 45,911 | | \$ | 47,024 |
| Bullion and coin | 1,158 | \$ 47,069 | | 1,758 | \$ 48,782 |
| Month of October— | | | | | |
| Free | \$ | 6,418 | | \$ | 7,634 |
| Dutiable | | 9,107 | | | 9,778 |
| | \$ | 15,525 | | \$ | 17,412 |
| Bullion and Coin | 699 | \$ 16,224 | | 769 | \$ 18,181 |
| Total for four months | | <u>\$ 63,293</u> | | | <u>\$66,963</u> |

EXPORTS

| Quarter ending 30th September— | | 1900 | | 1901 | |
|---------------------------------|-----|------------------|--|------|------------------|
| Products of the mine | \$ | 13,350 | | \$ | 12,127 |
| " Fisheries | | 2,595 | | | 2,408 |
| " Forest | | 11,824 | | | 11,957 |
| Animals and their produce | | 17,430 | | | 15,700 |
| Agricultural produce | | 4,498 | | | 4,248 |
| Manufactures | | 3,429 | | | 3,688 |
| Miscellaneous | | 35 | | | 6 |
| | \$ | 53,161 | | \$ | 50,134 |
| Bullion and Coin | 750 | <u>\$ 53,911</u> | | 237 | <u>\$ 50,371</u> |
| Month of October— | | | | | |
| Products of the mine | \$ | 3,340 | | \$ | 3,420 |
| " Fisheries | | 923 | | | 2,227 |
| " Forest | | 3,335 | | | 3,576 |
| Animals and their produce | | 6,110 | | | 8,341 |
| Agricultural produce | | 1,939 | | | 3,642 |
| Manufactures | | 1,437 | | | 2,025 |
| Miscellaneous | | 5 | | | 6 |
| | \$ | 17,089 | | \$ | 23,237 |
| Bullion and Coin | 102 | \$ 17,191 | | 19 | \$ 23,256 |
| Total for four months | | <u>\$ 71,102</u> | | | <u>\$ 73,627</u> |

SUMMARY (in dollars)

| For four months— | | 1900 | 1901 |
|--|----|------------|---------------|
| Total exports, other than bullion and coin.. | \$ | 70,250,000 | \$ 73,371,000 |
| Total imports, other than bullion and coin.. | | 61,436,000 | 64,436,000 |
| Excess of exports | \$ | 8,814,000 | \$8,935,000 |
| Net imports of bullion and coin | | 1,005,000 | 2,271,000 |

STATEMENT OF BANKS acting under Dominion Government charter or the months of September,
October and November, 1901, and comparison with November, 1900:

LIABILITIES

| | 30th Sept., 1901 | 31st Oct., 1901 | 30th Nov., 1901 | 30th Nov., 1900 |
|--|---------------------|--------------------|--------------------|--------------------|
| Capital authorized | \$ 75,826,666 | \$ 75,826,666 | \$ 76,326,666 | \$82,608,664 |
| Capital paid up | 67,486,687 | 67,548,410 | 67,568,607 | 66,674,653 |
| Reserve Fund | 36,903,355 | 36,961,244 | 37,074,774 | 34,154,043 |
| Notes in circulation | \$ 56,027,407 | \$ 57,954,779 | \$57,741,566 | \$ 51,947,269 |
| Dominion and Provincial Government deposits .. | 5,926,043 | 5,350,801 | 6,356,739 | 5,109,357 |
| Public deposits on demand in Canada | 96,866,910 | 98,508,815 | 98,754,437 | 107,935,633 |
| Public deposits after notice | 228,015,362 | 229,813,309 | 232,188,847 | 186,520,765 |
| Deposits elsewhere than in Canada | 31,465,489 | 32,144,482 | 33,711,370 | 21,222,627 |
| Loans from other banks in Canada, secured, including bills rediscounted | 678,116 | 776,283 | 803,848 | 1,565,586 |
| Deposits from and balances due other banks | 3,603,170 | 3,374,424 | 3,495,223 | 3,012,579 |
| Due to agencies of the bank and to other banks in United Kingdom | 6,416,019 | 4,754,116 | 4,588,367 | 3,798,247 |
| Due to agencies of the bank and to other banks else- where than in Canada and the United Kingdom .. | 881,627 | 1,243,118 | 868,104 | 938,396 |
| Other liabilities | 11,167,536 | 11,518,816 | 12,316,259 | 7,075,605 |
| Total liabilities | \$441,047,760 | \$445,439,014 | \$450,824,830 | \$389,126,133 |

ASSETS

| | | | | |
|--|---------------|---------------|---------------|---------------|
| Specie..... | \$11,306,127 | \$11,520,832 | \$11,376,510 | \$11,372,861 |
| Dominion notes..... | 20,016,696 | 21,556,441 | 21,322,577 | 19,517,119 |
| Deposits to secure note circulation..... | 2,568,918 | 2,568,918 | 2,568,918 | 2,372,973 |
| Notes and cheques on other banks | 14,928,126 | 15,762,871 | 13,928,716 | 12,049,905 |
| Loans to other banks in Canada secured, including bills rediscounted | 678,115 | 641,118 | 803,848 | 1,509,389 |
| Due by other banks in Canada..... | 4,669,400 | 4,462,107 | 4,767,435 | 4,478,434 |
| Due from agencies of the bank and from other banks in United Kingdom | 5,330,785 | 7,387,327 | 7,530,952 | 7,520,888 |
| Due from agencies and from other banks elsewhere than in Canada and the United Kingdom | 17,778,306 | 14,023,814 | 14,010,462 | 10,241,361 |
| Dominion and Provincial Government securities .. Canadian municipal securities, and British or foreign or colonial public securities other than Canadian Railway and other bonds, debentures and stocks .. | 11,467,476 | 10,829,562 | 10,426,428 | 12,284,478 |
| Call and short loans on stocks and bonds in Canada | 14,222,130 | 14,320,074 | 14,304,026 | 12,214,143 |
| Call and short loans elsewhere than in Canada..... | 32,283,676 | 30,842,840 | 33,061,712 | 25,475,144 |
| Current loans in Canada..... | 38,158,853 | 39,324,335 | 37,552,474 | 33,767,136 |
| Current loans elsewhere than in Canada..... | 44,326,826 | 43,883,948 | 50,963,477 | 30,536,592 |
| Current loans in Canada..... | 286,195,554 | 289,469,839 | 288,820,260 | 276,464,126 |
| Current loans elsewhere than in Canada | 27,306,614 | 28,842,893 | 28,534,885 | 19,067,825 |
| Loans to Dominion and Provincial Governments... | 2,404,978 | 2,881,028 | 3,223,091 | 2,483,795 |
| Overdue debts | 2,033,105 | 1,979,992 | 1,999,591 | 2,250,765 |
| Real estate..... | 920,477 | 885,871 | 877,365 | 1,158,727 |
| Mortgages on real estate sold .. | 668,278 | 727,954 | 717,475 | 586,469 |
| Bank premises | 6,656,283 | 6,701,421 | 6,727,384 | 6,478,965 |
| Other assets | 10,048,102 | 10,696,776 | 12,849,548 | 8,169,577 |
| Total assets | \$553,954,790 | \$559,310,149 | \$566,367,315 | \$500,006,770 |
| Loans to directors or their firms | \$12,289,308 | \$11,267,028 | \$10,561,503 | \$12,808,505 |
| Average amount of specie held during the month... | 11,580,179 | 11,796,730 | 11,733,196 | 11,475,216 |
| Average Dominion notes held during the month .. | 19,958,154 | 20,135,049 | 20,855,982 | 18,629,893 |
| Greatest amount of notes in circulation during month | 50,999,388 | 59,000,172 | 60,397,097 | 54,558,416 |

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(000 omitted)

| | MONTREAL | | TORONTO | | HALIFAX | | HAMILTON | |
|-------------|----------|---------|---------|---------|---------|---------|----------|---------|
| | 1899-00 | 1900-01 | 1899-00 | 1900-01 | 1899-00 | 1900-01 | 1899-00 | 1900-01 |
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| December | 68,979 | 63,311 | 47,011 | 48,325 | 6,744 | 6,946 | 3,730 | 3,842 |
| January .. | 62,853 | 71,115 | 45,114 | 54,299 | 6,707 | 7,359 | 3,742 | 3,684 |
| February .. | 54,250 | 51,138 | 37,864 | 41,946 | 5,354 | 6,116 | 3,040 | 2,922 |
| March ... | 54,882 | 69,580 | 40,581 | 50,062 | 5,868 | 6,191 | 3,171 | 3,398 |
| April | 55,915 | 69,132 | 38,842 | 49,079 | 6,004 | 6,923 | 3,099 | 3,519 |
| May | 62,332 | 84,507 | 43,215 | 55,608 | 5,984 | 6,549 | 3,493 | 4,031 |
| June | 65,543 | 79,746 | 44,545 | 50,697 | 6,187 | 7,047 | 3,342 | 3,112 |
| July | 61,293 | 80,198 | 44,400 | 52,867 | 7,184 | 8,618 | 3,194 | 3,555 |
| August .. | 58,229 | 71,723 | 37,075 | 49,253 | 7,162 | 8,421 | 3,035 | 3,149 |
| September | 57,686 | 73,368 | 38,933 | 51,828 | 6,351 | 6,681 | 3,176 | 3,173 |
| October .. | 65,983 | 78,250 | 47,246 | 53,983 | 6,920 | 7,250 | 3,642 | 4,445 |
| November | 68,656 | 85,581 | 47,550 | 54,957 | 6,921 | 7,572 | 3,481 | 3,736 |
| | 736,601 | 877,649 | 512,376 | 612,904 | 77,386 | 86,073 | 40,145 | 42,566 |

| | WINNIPEG | | ST. JOHN | | VANCOUVER | | VICTORIA | |
|-------------|----------|---------|----------|---------|-----------|---------|----------|---------|
| | 1899-00 | 1900-01 | 1899-00 | 1900-01 | 1899-00 | 1900-01 | 1899-00 | 1900-01 |
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| December | 12,966 | 10,869 | 2,963 | 3,213 | 4,090 | 3,686 | 3,006 | 2,443 |
| January .. | 9,906 | 9,623 | 3,033 | 3,092 | 3,550 | 3,369 | 3,044 | 3,257 |
| February .. | 6,702 | 7,158 | 2,342 | 2,742 | 2,881 | 2,674 | 2,324 | 2,181 |
| March ... | 7,320 | 7,839 | 2,509 | 2,860 | 3,378 | 3,196 | 2,372 | 2,243 |
| April | 7,091 | 7,634 | 2,492 | 3,060 | 3,543 | 3,511 | 2,106 | 2,570 |
| May | 9,762 | 8,681 | 2,945 | 3,341 | 3,717 | 3,673 | 2,704 | 2,962 |
| June | 9,612 | 8,547 | 2,978 | 3,364 | 3,843 | 4,058 | 2,758 | 2,746 |
| July | 9,395 | 9,213 | 3,468 | 3,890 | 4,286 | 4,610 | 2,986 | 2,806 |
| August... | 8,173 | 9,324 | 3,561 | 3,805 | 4,391 | 4,498 | 2,875 | 2,441 |
| September | 7,320 | 10,314 | 3,340 | 3,394 | 4,301 | 4,215 | 2,639 | 2,133 |
| October .. | 9,183 | 15,174 | 3,362 | 3,905 | 4,956 | 4,948 | 3,070 | 2,772 |
| November | 11,618 | 21,532 | 3,115 | 3,296 | 4,008 | 4,402 | 3,151 | 2,516 |
| | 109,048 | 125,908 | 36,108 | 39,962 | 46,944 | 46,840 | 33,035 | 31,070 |

QUESTIONS ON POINTS OF PRACTICAL INTEREST

FORM FOR QUESTIONS

The Editing Committee

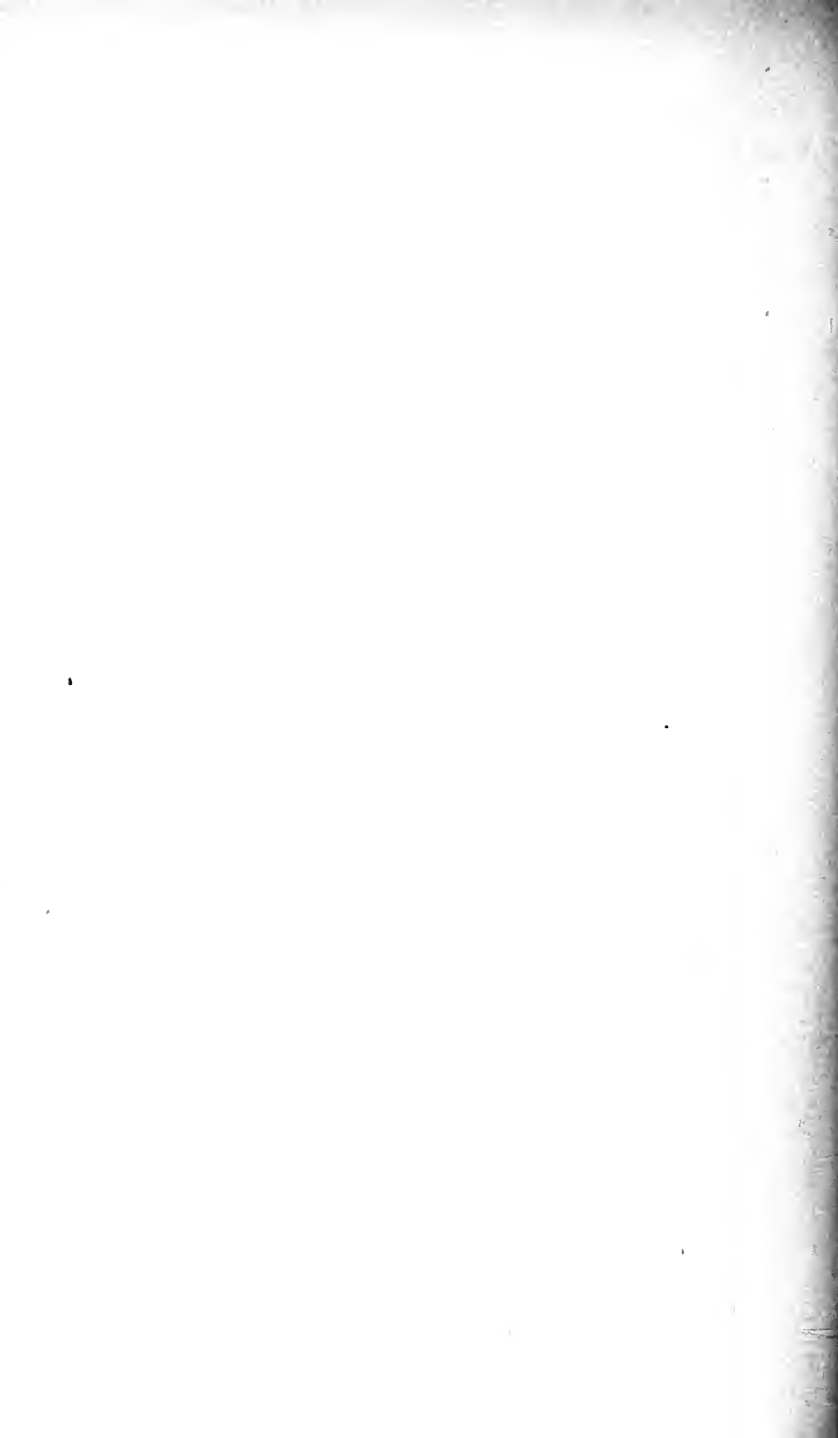
Journal of the Canadian Bankers' Association, Toronto.

Please give your opinion on the following point by mail* in the next issue of the Journal

Question :

If answer is desired by mail, stamp should be enclosed.

If the question does
not call for an answer
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name need not be given
if he so prefers.



JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

APRIL—1902

THE HISTORY OF CANADIAN CURRENCY,
BANKING AND EXCHANGE

IX.—SOME SPECIAL FEATURES*

THE central features in the expansion and crisis of Canadian banking during the later thirties have already been dealt with. It now remains to record some of the special incidents of that crowded and complex period. Though all of these are not directly involved in the main stream of events, yet they are of more or less interest and importance for the general history of our subject.

It will perhaps be remembered that the charter of the Quebec Bank expired on the first of May, 1836, while those of

*Chief sources:

Journals of the Assembly, Upper Canada.

Statutes of Upper Canada.

Journals of the Special Council, Lower Canada.

Ordinances of the Governor General and Special Council, Lower Canada.

British Blue Books relating to Canada, 1837-39.

An Historical and Descriptive Account of British America. By Hugh Murray. Three vols. Edin., 1839.

The Constitution, Toronto, 1837.

The Montreal Gazette, 1837.

The Quebec Gazette, 1838.

The Chronicle and Gazette, Kingston, 1839-40.

the Montreal and City banks continued until the first of June, 1837. During the session of 1835-36, the Quebec Bank petitioned the Assembly for the renewal of its charter for a further term of years. At the same time, Mr. Leslie presented a numerously signed petition from Montreal for the renewal of the charters of the Montreal and City banks. The Standing Committee on Trade reported these petitions favourably, yet the French Canadian majority immediately gave evidence that they were not favourable to the renewal of the bank charters on the existing basis. The applications of the Montreal and City banks were set aside for the present session. The petition of the Quebec Bank, being urgent, was alone considered. The Assembly took the matter up in committee on January 2nd, 1836. The debate on the subject indicated that the French Canadian leaders intended to radically amend the charters of the banks with a view to altering their system and management. There was a tendency to adopt the constitution of the Banque du Peuple as a standard and to sanction a system of free banking on that basis. In the discussion on the Quebec Bank charter, several amendments were suggested by French Canadian members, with a view to restricting the powers of the officials of the bank, abolishing votes by proxy, preventing members of the same firm from being directors of two different banks, and entirely prohibiting the banks from dealing in exchanges. However, Mr. Papineau intimated that even more radical measures would have to be adopted with reference to the banks. In common with the majority of the House, he took the ground that the whole banking question would have to be gone into the following year, and that therefore it was unnecessary to do more during the present session than renew the charter of the Quebec Bank for thirteen months, so that all the bank charters might expire on the same date. Thus the Act 6th Wm. IV. Cap. 48, consists of but one clause, and simply renews the charter of the Quebec Bank till June 1st, 1837.

But before the next session of the Legislature was called, the political troubles of Lower Canada had reached a very acute stage. The Governor found it necessary to prorogue the Legislature before it got beyond the discussion of the Speech from the Throne. The rebellion breaking out shortly afterwards, the con-

stitutional government of Lower Canada was entirely suspended and the affairs of the Province carried on by a Special Council.

Meantime the banks of Lower Canada, realizing the attitude of the majority towards them, found themselves in a somewhat awkward position. They were threatened with the double danger of failing to secure the renewal of their charters, and of meeting a threatened commercial crisis, in common with American banking and exchange.

During the winter of 1836-37 it became evident to the banks that they had little hope of getting their charters renewed in any form during 1837, hence they prepared to face the inevitable. At a meeting of the shareholders of the Bank of Montreal, held on the 21st of Nov. 1836, it had been resolved that, in case there should be no prospect of a renewal of the charter, the bank should revert to the condition of a private partnership under articles of association, as before receiving a public charter.

At a meeting of the stockholders of the Quebec Bank, on March 3rd, various resolutions were passed. The gist of these was that, in case their charter could not be renewed, the president and directors were authorized to take what measures might be possible to obtain a renewal of the act of incorporation, or something as near it as possible, so that the business of the bank might be continued after the first of June. As the existing capital of the bank, consisting of £75,000, had been found inadequate to its needs, the president and directors were authorized to increase the capital to £225,000, as provided for in the existing charter. They were also empowered to create a loan or loans to secure this extra capital. For the first time interest was to be allowed upon deposits after June 1st. After the charter expired, the president and directors might make such rules for the future conduct of the affairs of the bank as might appear advisable, subject to the approval of the stockholders at a general meeting convened for the purpose.

On the 30th of March, 1837, the Bank of Montreal gave public notice that, in accordance with the resolutions of the shareholders of the previous November, a book of subscription was to be opened at the head office of the bank, on the 1st of April, and remain open for ten days, for the purpose of receiving the subscriptions of the present shareholders to the new articles

of association providing for the continuation of the business of the bank after the first day of June next. Immediately afterwards, on April 11th, books were to be opened at the offices of the bank, in both Montreal and Quebec, to receive subscriptions for £250,000 additional capital, in shares of £50 each. Of this new stock, ten per cent. is to be paid at the time of subscribing, and a further instalment of fifteen per cent. is to be paid on the 15th of May next. Subscribers paying in the whole amount of their stock before the first of June will be entitled to dividends on the full amount of their shares. In the notice it is stated to be the intention of the bank to call in the whole of the new stock within a year after the first of June.

On the same date the City Bank issued a similar notice, as regards the request to the existing stockholders to subscribe to the new articles of association.

During May the crisis in the United States culminated in the suspension of the New York banks. The Lower Canadian banks, following their lead, passed the first of June, which marked the expiration of their charters, in a condition of suspended specie payment.

There being no legislative relief possible in Canada before the bank charters should expire, the banks, early in the year 1837, sought aid by a direct appeal to the Sovereign. Setting forth the special and peculiar circumstances in which they were placed, and the serious injury to themselves, along with the commercial and agricultural interests of the country, should they be forced to close their doors, they petitioned for royal charters to enable them to tide over the difficulties of the period. Their petitions were granted, and the Montreal, Quebec and City banks received royal charters, dated the 31st of May, 1837. The Bank of Montreal charter simply reproduced the leading features of the acts which embodied its existing charter. It fixed the capital at £250,000 as before, instead of at £500,000 to which the shareholders had determined to raise it. Evidently not anticipating any serious interruption of the regular government of the Province, the legal duration of the charter was fixed at twelve months from the conclusion of the next session of the Legislature. As that session opened and closed in August, 1837, the charter was not valid beyond August, 1838. The royal charter of the Quebec

Bank was practically identical with that of the Bank of Montreal, and evidently the City Bank's charter was of the same nature. The capital of the Quebec Bank was fixed at £75,000, which was the actual capital of the bank, though, as already observed, its authorized capital was £225,000. From some manuscript papers of Mr. Noah Freer, of the Quebec Bank, in the Canadian Archives, we learn that the expenses connected with obtaining these royal charters were as follows:—Bank of Montreal, £564 18s. 8d., of which £110 represented the stamp duties on the document itself; Quebec Bank, £554 8s. 8d.; City Bank, £526 3s. 8d. This was no small tax for little more than one year's lease of life.

As soon as the Special Council was established in Lower Canada, the Bank of Montreal invoked its aid in obtaining a new charter. The first session of the Council extended from the 18th of April to the 5th of May, 1838. On April 28th a petition was presented from the president and directors of the Bank of Montreal, praying for incorporation. The petition states that, anticipating the expiring of their former charter in June of the previous year, the petitioners, in the month of March last, had associated themselves together for the purpose of purchasing from the stockholders of the incorporated Bank of Montreal, all their interests, and of assuming and carrying on the business. To that end they had subscribed a capital of £500,000, and had taken over the incorporated bank and continued the business under the same name and with such benefit to the public as the peculiar circumstances of the times would permit. About four-fifths of the subscribed capital had been paid in, and they were of opinion that the public usefulness of the institution would be greatly enlarged, public confidence would be restored, and the commerce and industry of the Province revived, if they were granted an ordinance or act of incorporation similar to that which had expired. This petition was signed by the following gentlemen, who were then the president and directors of the bank: Peter McGill, President; Chas. Masson, Vice-President; Chas. Brooke, Thos. B. Anderson, Jos. Shuter, John McPherson, Jas. Logan, J. Redpath, John Molson, John Torrance, Wm. Lunn, J. Jamieson. The necessary ordinance was duly passed by the Council.

It is rather remarkable that the bank, in its petition to the Council, ignores entirely the royal charter which it had received

and simply refers to the action taken by the shareholders of the bank to continue its existence as a private corporation. Neither does the ordinance which was passed, giving it once more a public charter, refer in any way to the royal charter but only to the existence of the bank as a private corporation. This is the more noticeable in that the similar ordinance of the Special Council chartering the Quebec Bank makes very full reference to the royal charter, reciting its leading features and definitely sanctioning and continuing its powers.

The ordinance of the Special Council chartered anew the existing corporation of the Bank of Montreal in terms identical in all essential respects with the original charter. A special clause transferred the outstanding debts and claims of the old chartered bank to the newly chartered one. The capital of the bank was increased to £500,000, but otherwise practically no change was made, even the criminal clauses appointing the death of a felon without benefit of clergy for embezzlement and forgery, were renewed, though these caused the Lords of the Treasury to advise the disallowance of the ordinance in favour of the Bank of British North America which was passed at the same session. Evidently the Bank of Montreal ordinance was not referred to their Lordships.

The Bank of Montreal having carried on a large business in the Province of Upper Canada, previous to the expiring of its charter, took measures to protect its claims should its charter lapse. It sought and obtained an act of the Provincial Legislature of Upper Canada, during the session of 1836-37, authorizing it to collect its debts notwithstanding the expiry of its charter. During the same session, in consequence of the passing of the act which declared illegal the issue of notes or other paper intended to pass as money, except by definite legislative authority, the Bank of Montreal found itself prevented from issuing its notes in Upper Canada. Before this, as we have seen, various unsuccessful efforts had been made to shut out the Lower Canadian banks from a share in the banking business of Upper Canada. Incidentally, it was accomplished by this act directed against the private banks. However, the Lower Canadian banks, and especially the Bank of Montreal, sought to remedy this by obtaining special legislative authority for their operations in the

upper Province. On March 18th, 1839, the Committee on Banking of the Upper Canadian Legislature, presented, as its first report, a bill authorizing institutions incorporated for carrying on the business of banking in Lower Canada, to establish agencies and carry on the business of banking in Upper Canada. This bill, however, was afterwards lost in committee of the House. During the following session another bill to authorize the chartered banks of Lower Canada to carry on business in Upper Canada was introduced. It was supported by a petition from the Toronto Board of Trade, and succeeded in passing the Assembly, but was rejected by the Council. However, in the meantime, the Bank of Montreal had partly solved the difficulty by purchasing, apparently in the beginning of 1838, the affairs of the People's Bank, one of the Upper Canadian joint-stock banks which had been exempted from the action of the law against private banks. But what the Bank of Montreal desired was the chartered privilege to carry on banking in Upper Canada in its own name and with its own notes. This, however, was not attained until the union of the Provinces, when the People's Bank ceased to have a separate existence.

The Quebec Bank, finding that the Bank of Montreal had been successful in its application for a charter at the hands of the Special Council, followed its example and petitioned for a charter the following year. On March 13th, 1839, the Governor submitted to the Council the draft of an ordinance to prolong the term of the royal charter incorporating the Quebec Bank, and to make further provisions for its government and management. The ordinance was duly passed and became law. In addition to continuing the royal charter, with certain conditions and provisions necessary to give it effect, until 1842, it increased the capital of the bank from £75,000 to £225,000. In all essential respects, after the somewhat lengthy preamble, this ordinance was identical with the former legislative charter of the bank, and with that of the Bank of Montreal, except as regards the criminal clauses of the latter. The City Bank does not appear to have applied for any special ordinance continuing its charter; at least no record of it appears.

It was but natural that the mania for banking, which preceded the crisis of 1837, should have bred not only those fairly

honest, though not always strongly founded institutions which have already been described, but also a swarm of more or less fraudulent undertakings. These ventures were obviously intended merely to prey upon the public, through the issue of paper money which, under the peculiar conditions of the time, was likely to remain in circulation. They professed to be private or joint-stock banking corporations, and employed the means and usages which even the most respectable institutions were compelled to employ, during the suspension of specie payments and the withholding of public charters. All things considered, many of these spurious or pretended banks were cleverly managed and successfully evaded the law as it then existed, or was necessarily relaxed.

Most of them had their origin and chief field of operations in the neighbouring States. The laws against private banking in those States being quite stringent, they were forced to use the Canadian Provinces, and especially Lower Canada, as a basis of operations. Thus most of them pretended to be Canadian banks and circulated their notes on both sides of the international boundary.

One of the first of these institutions to be heard of was the Commercial Bank of Brockville. Its notes were made to resemble those of the Commercial Bank of Kingston, which had a branch in Brockville. Five and ten dollar notes were being circulated among the farmers of the western portion of the Province early in January, 1837. Nothing was known of it at Brockville and no attempt seems to have been made to circulate its notes in that neighbourhood. A more tangible institution was the Commercial Bank of Fort Erie, which appeared towards the end of January, with a nominal capital of £500,000. It was a joint-stock bank, the president and all the directors, except one, being from Buffalo, the one hailing from Black Rock. The cashier was a Mr. Forsyth, of Waterloo, Upper Canada, and the stockholders were reported as partly Americans and partly Canadians. This bank made a pretence of setting up a regular establishment, but evidently its chief anxiety was simply to issue notes, a number of which it succeeded in getting into circulation.

The suspension of specie payments by the American and Lower Canadian banks afforded an excellent opportunity for these and similar ventures to push their paper, without being forced to

disclose the nature of their operations by meeting demands for the redemption of their notes. Accordingly, during May, 1837, Montreal became the nominal centre of a number of new banks.

The public becoming alarmed, a meeting was called about the 18th May, "To take into consideration the circumstances of individuals, entire strangers to the community and to the country, establishing themselves as bankers in this city, and issuing notes purporting to be bank notes, and also to elicit an expression of opinion thereon." Two institutions were specially under consideration, namely, the Merchants Bank of Montreal and the Ottawa Bank, also of Montreal. Mr. A. P. Hart, a lawyer, appeared at the meeting on behalf of the president of the Merchants Bank. He stated that it was not the intention of that bank to issue notes in the city until the public should express confidence in the institution. Their only reason for opening an office in the city at that time, was that they might redeem \$100 of their notes which had been issued at Buffalo. Mr. Johnston, of Bytown, on behalf of the Ottawa District, repudiated all connection with the Ottawa Bank, which he regarded as simply the work of some Yankee speculators. Though one of the promoters of the Ottawa Bank was declared to be present at the meeting, yet he would not come forward to defend his bank. However, Mr. Wm. Lyman was able to contribute some information with reference to the latter enterprise. During a recent visit to New York, he had been asked by the police to attend the examination of certain parties calling themselves the president, directors, cashier and stockholders of the Ottawa Bank of Montreal. As Mr. Lyman had to admit that there was no law in Lower Canada against the establishment of such a bank, the parties were discharged. From another account, published in Toronto, it appears that there were four of these persons, and that the police of New York found them in the act of preparing and signing notes, of various denominations, of the Ottawa Bank. They explained, on examination, that they were a private banking company, consisting, apparently, of a president, a vice-president, a cashier and a stockholder, intending to set up banking in Montreal. They had signed notes to the extent of \$20,000, unsigned notes to the extent of nearly \$200,000 and about \$700 in specie. There being no ground on which the police could detain them, they were discharged. A

the Montreal meeting various resolutions were passed. The gist of these was, that, since there was no general law in the Province regulating the privilege of banking and the issue of bank notes, it was the more urgent that the public should be warned against irresponsible parties issuing bank notes, and especially at the present disturbed period in the affairs of the Province.

However, the promoters of these spurious banks were shrewd enough not to make trouble for themselves in the neighbourhood of their nominal head-quarters, hence none of their notes appear to have been issued in Montreal or its vicinity. The notes were put in circulation partly in the western portions of the upper Province, but more generally in the newer regions of the American west, bordering on lakes Erie and Huron. In July there appeared an account of the arrival at Toronto of the captain of a schooner from Michigan who had acquired \$600 worth of Ottawa Bank notes.

About the middle of July, 1837, the editor of the *Montreal Gazette* received a letter from the police magistrate of Buffalo, wishing to be informed, through the medium of his paper, as to the character and standing of the following banks, whose notes were being circulated in that neighbourhood:—The Bank of St. Lawrence Lumber Company, at Malbaie; The Merchants Bank of Montreal; The Mechanics Bank of St. Johns, L.C.; The Bank of Brockville; The Mechanics Bank of Montreal; The Bank of Ottawa; The Canadian Bank of St. Hyacinthe. To this the editor replied that so far as was known none of those banks had any paper in circulation in that city or neighbourhood. Some time before, the Canadian Bank of St. Hyacinthe had notes in circulation which were redeemed by an agent in Montreal at a small discount, but they had been recently withdrawn and were now redeemed at only one-half their value. He refers also to the public meeting with reference to the Merchants Bank and the Bank of Ottawa. This public statement brought forth a reply from the agent of the Banque Canadienne of St. Hyacinthe, an institution already referred to in these articles, stating that the bank had only suspended specie payment in consequence of similar action on the part of the United States and Lower Canadian banks. The agency for the redemption of its notes being no longer needed in Montreal, it was withdrawn. People might indeed

have sacrificed their notes at a discount, yet there was no doubt but that they would all be redeemed in time. The editor was also waited on by two gentlemen representing the Mechanics and Merchants banks, who stated that the notes of the banks in question were redeemed in current bills on application at their offices. Their offices however were found to be in very obscure locations. This extreme modesty and retirement on the part of the head offices of banks which were vigorously pushing their notes in the west would seem to indicate that while they might actually redeem such notes as found their way to them, yet they were by no means anxious that many should find their way there.

In the meantime these banks continued to do a thriving business in the west, and enquiries from Buffalo, as to their operations, continued. From some of these letters we learn that those manipulating the banks had occasionally redeemed small amounts of their notes, thus adroitly giving the ventures the appearance of sound institutions and greatly aiding their further operations. This will account for the action of the representatives of the Merchants and Mechanics banks in Montreal. Their retiring disposition is also illustrated in the case of a man who, in going from Buffalo to Montreal, exchanged a \$500 United States note for notes of the Mechanics Bank, under the assurance that they would be redeemed at the head office in Montreal. In Montreal, however, he could find no such bank and returned to Buffalo seeking redress. It appears that it was chiefly under cover of exchange transactions, such as these, that the notes were put into circulation and flooded the western States. When one bank was discredited, another took its place. Thus the Ottawa, Brockville and Merchants banks came to be too well known in certain districts, and in the place of their notes appeared those of such banks as the Mechanics Bank of St. Johns, and the Malbaie Bank. The notes of the former bank were particularly admired for the beauty of their designs and the excellence of the engraving.

As the men connected with these institutions came to be known, most of them were found to be from Buffalo, but a few were from Canada, usually near the border line. In all cases they were parties without responsibility, the agents being usually mere clerks.

On August 5th, the Montreal committee of the Board of Trade met and passed several resolutions on the subject of these banks, as a further warning to the public. However, some of the ventures maintained their operations with remarkable boldness in regions far from home. Thus, in August, the following advertisement appeared in the *Chicago Democrat*; "Notice. The subscribers have opened an office in this city for the purpose of doing an exchange business. Notes of the Mechanics Bank at Montreal, and all other kinds of uncurrent money, taken at the usual rates of discount. Next door to King Walker & Co. Aaron Goodrich, Horace O. Gaylord. References, Hon. Wm. B. Rochester and Messrs. Stevens and Co., of Buffalo, L. A. Spaulding, Lockport, and Messrs. H. H. Brown and Co., Detroit." This advertisement coming to the notice of the Hon. W. B. Rochester, he publicly repudiated all knowledge of them or their doings. Stevens and Co. did likewise, declaring that they had no knowledge of them and no confidence in their notes. About the same time in an Albany paper appeared the following: "Bank of Ottawa, Montreal. Joseph C. Frink, late teller of the Monroe Bank at Rochester, has been appointed president of the Bank of Ottawa. The stock of the institution having recently changed hands, the bank is now placed on as good footing as the other banks in that Province."

Finally, about the beginning of October, the people of Buffalo and its neighbourhood took more decisive steps towards suppressing these institutions. The grand jury of Erie County issued a presentment against the notes of the following pretended banks: The Mechanics Bank of Montreal, the Merchants Bank of Montreal, The Bank of Ottawa, The Oxford Bank, The Bank of St. Lawrence Lumber Co., The Mechanics Bank of St. Johns, L.C., The Bank of Brockville, The Kirtland Society and The Georgia Lumber Co. In the course of its presentment the grand jury makes a statement to the following effect. Large quantities of the notes of these pretended banks have been put into circulation in this country and at the west, but it has been proved to us that these banks have no existence, save in name. As an evidence of their character take the Merchants Bank, which is owned by one man of no standing who lives in Buffalo. He hires both the cashier and manager at Montreal to keep an office. It has been

proved that quantities of the notes of some of these banks are deposited with persons to issue as opportunity offers. An office has been established at New York which enables them to advertise that they will redeem, at the usual discount, the notes of some of these banks. But the jury is convinced that the object of these pretended banks is simply to defraud the public, and they therefore warn the public against accepting their notes or having anything to do with them.

So long, however, as suspension of specie payment by the regular banks continued, there was no adequate means of finally checking the operations of these spurious banks, which always managed to keep technically free from the clutches of the law. Only after the resumption of specie payment did they rapidly disappear. Even yet, however, an occasional note turns up to puzzle the antiquarian. Though these banks belong to a forgotten chapter in Canadian history, yet they formed part of that varied experience which enabled the people of the United States and Canada to realize what were the essentials of a sound system of banking.

One of the secondary consequences of the suspension of specie payments by the banks, or the curtailment of their issues where not suspended, was a veritable famine of small currency. The fractional currency of the country was closely connected with the redemption of bank notes, and the bank notes ceasing to be redeemable, a great part of the metallic currency of the country vanished from ordinary circulation, having passed to a considerable premium. No bank notes being permitted to be issued for less than five shillings, or one dollar, a great scarcity of fractional currency inevitably resulted. As a natural consequence, the old system of issuing *bons* was once more resorted to by many of the merchants of both Provinces. Almost every town of any importance had its local currency, which circulated throughout the surrounding district. This fractional paper was usually issued in denominations of 3d. (5c.), 6d. (10c.), 7½d. (12½c. a York-shilling), 1s. 3d. (25c.), and 2s. 6d. (50c.) In the English sections of the country they were commonly known by the American name of "shin-plasters." In the case of the more responsible merchants, redemption of these small notes was promised if presented in sums of five shillings or over; in other words,

redemption was promised in bank notes of one dollar and upwards.

With the whole country filled with these unauthorized but nevertheless indispensable fractional notes, it became increasingly difficult to avoid fraudulent or insolvent issues, on the one hand, or to abolish the whole system, upon the other. Various attempts were made to deal with the whole question of private note issue. One of the proposals, the least objectionable in itself though of doubtful expediency under the circumstances of the country, was the issue of a Provincial paper currency, and the suppression of all others except that of the chartered banks. This, as we have seen, was specially advocated in Upper Canada.

Proposals to deal with the matter were also urged upon the Government in Lower Canada. Finally, on March the 22nd, 1839, the Governor-General sent to the Special Council the draft of an "Ordinance to prevent the circulation of an unauthorized or unsound paper currency in this Province." The proposed ordinance was not very favourably regarded by the Council. It was referred to a special committee but was never heard of again. Apparently the Governor was asked to submit a more palatable measure, for on April 4th he submitted another draft of an ordinance under the title of, "An ordinance to regulate private banking and the notes of private bankers." This was passed without any trouble. The preamble states that, "It is expedient to regulate, by law, the issue or circulation of notes and other written promises and other undertakings, for the payment of money, intended for circulation in this Province, and not being those of any bank chartered or recognized, or authorized by the Legislature of this Province, or by a competent authority in any part of Her Majesty's dominions, or in the United States of America." Under this law no person is to be permitted to issue notes, bills, or any other form of undertaking to pay money intended for circulation under £5 cy., without a license to act as a banker. Any one having a license and refusing to redeem notes on demand shall lose his license. The same applies to the agents of authorized banks, not being chartered in the Province, who shall refuse to redeem their notes in specie, except when suspension is permitted by law, when they may redeem with the notes of the chartered banks of the Province. No notes

of any kind were to be issued under five shillings, and licenses were to be granted for not longer than one year. Those obtaining licenses to issue bills, notes or bons, were required to furnish the Government with a statement of their affairs showing their effects and liabilities. It will be observed that this ordinance did not prohibit the practice of issuing notes by merchants and private bankers, but simply regulated it, with a view to weeding out the spurious and insolvent issues such as were being made.

We have already seen that there was a growing element in the Canadian Provinces in favor of some direct Government issue of paper currency. The views of this element had found expression in efforts, on the one hand, to establish a Provincial bank, and, on the other, to secure the direct issue of Provincial notes, the idea at present embodied in our Dominion notes. Hitherto these efforts had been without success. However, the financial embarrassment of the country, due to the crisis of 1837-39, revived the project in a very urgent form. The fourth report of the Committee on Finance, which was presented to the Assembly of Upper Canada on February 22nd, 1838, refers to the embarrassed condition of the revenue of the Province, and at the same time the necessity for continuing the public works already undertaken, for re-establishing the circulating medium, and restoring the trade and commerce of the country. To accomplish these very pressing objects, it is recommended that an act should be passed authorizing the Receiver-General to issue small bills, payable on the first of June, 1839, and which would be received on Government account. These would supply the country with a medium of exchange based on the credit of the Province. It is pointed out that they would be at least as valuable as the notes of the Commercial Bank, which has suspended specie payment and yet whose notes are accepted in all business transactions as nearly equal in value to specie. The credit of the Province should be better than that of any bank, especially as its paper would be received in payment of public dues. The Government would have time to effect a loan before the notes were due, and in the meantime the prosperity and progress of the country would be restored. The report was signed by W. H. Merritt, as chairman.

These proposals, with the expectations founded upon them, afford one more striking illustration of how completely at sea even the more intelligent men of the country were on the subject of the functions and limitations of paper money. No real distinction is made between capital and money, or between metallic and paper money. All the evils of the country are attributed to the scarcity of money, and the supply of a paper money with a backing of reliable credit to get it into circulation, is considered to be a thoroughly reasonable and effective means of restoring prosperity. The conception was as happy as that of putting in an extra pump to prevent a well from going dry.

Together with this report Mr. Merritt introduced a bill "To authorize the issuing of bills on the credit of this Province." The bill passed the Assembly, but was rejected by the Council. During the following session, in the spring of 1839, another bill "To authorize the issue of bills of credit," was passed by both Houses, but was reserved by Lieutenant-Governor Arthur in accordance with his general instructions from the Home Government.

In the course of the agitation for the issue of a Provincial currency it had been discovered that an Imperial Act of 4th Geo. III, with reference to the American Colonies before the Revolution, still blocked the way of any legal action on the part of the Provincial Legislatures. This act prohibited any paper bills of credit which might be issued in any of His Majesty's colonies or plantations in America, from being made a legal tender.

In February, 1838, when the first bill on the subject was passed by the Assembly of Upper Canada, that House, through its Speaker, Allan McNab, sent a petition to the Queen, stating that this act was greatly to the detriment of the prosperity of the Province and praying that it be repealed, at least as far as it applied to the Province of Upper Canada. The Colonial Secretary acknowledged the receipt of the petition, and promised to return the report of the Lords of the Treasury upon it. In reply it was pointed out to the Assembly that by an act of 12th Geo. III, it was permitted to make Government notes, bills, or debentures receivable for public dues, but not otherwise legal tender.

Knowing that the bill of 1839, authorizing the issue of bills of credit, was likely to be passed, Lieut.-Gov. Arthur had written

to the Colonial Secretary, Lord Glenelg, on the 20th of Nov., 1838, asking for special instructions in connection with this matter. In his general instructions, Lieut.-Gov. Head had been required to reserve any bills dealing with currency or banking. His successor, however, wished to know whether he would be allowed to give provisional assent to a bill having for its object an issue by the Receiver General, on the credit of the Province, of bills or notes payable at Toronto twelve months after date, to the extent of £100,000, to be made chargeable on the prospective revenue of the Province. For his own part he thinks the Province may be driven to something of this nature. He cites the Army Bills as a precedent, which of course they were not, since they were direct commands upon British capital and were used as such. Governor Arthur admits that the ordinary Government debentures could not be disposed of in the Province because there was no capital to take them up, and they could not be sold in London because the credit of the Province was gone. Under ordinary circumstances he says he would be opposed to the issue of inconvertible paper money, but the circumstances of the country are peculiar. There is a terrible stagnation in business, and property of all kinds is unsalable, while the inflow of British immigration and capital has been greatly checked. Now the only circumstances under which a Government can safely issue a paper currency is when the expanding prosperity of a country stands in need of an enlarged medium of exchange. Under such conditions the Government may forestall the banks and supply a share of the paper currency, as in the case of our Dominion notes. But when business is stagnant and the Government in need of capital, to issue a paper currency is simply to exaggerate the evils which already exist. As already pointed out, the policy of Governor Head and the directors of the Bank of Upper Canada in preventing the suspension of specie payments by the banks, had added to the natural burdens of the commercial crisis an abnormal shrinkage in the currency of the country. But under the conditions then existing the crisis had done its work, the banks had suspended specie payment when the crisis was over, and there was now plenty of money for any business there was to do. It was capital, not money, that both the business men and the Government wanted.

However, before the Lieut.-Governor got a reply to his enquiries, Lord John Russell had become Colonial Secretary, and the Right Hon. C. P. Thomson, afterwards Lord Sydenham, was Gov.-General. In his instructions to the new Governor, Lord Russell refers to the reserved bill authorizing Treasury notes or bills of credit of one pound each, to the extent of £250,000. The measure, he says, cannot be confirmed, because the issue of such a large amount of inconvertible paper currency would do much more harm than good in its injurious effect on the currency, monetary transactions and private property of the Province. If the credit of the Province can be made to sustain the Treasury in any ordinary way he may authorize it, but it would be disastrous to have the future prosperity of the country threatened and an early return to sound financial operations precluded by expedients resorted to in tiding over temporary difficulties. Lord Russell sent similar instructions to Lieut.-Governor Arthur. In default of this method of employing the Provincial credit the Government attempted to dispose of its regular debentures as best it could, though the results were far from encouraging.

As was but natural, the popular American conviction of the period that paper money was both wealth and capital wherever the credit upon which it was issued was good, was held to be applicable to other spheres than that of government. One of the important enterprises of the day was the Welland canal, a most useful and even indispensable undertaking with reference to the future development of the country. Like most other undertakings of the time, its promoters had their own difficulties in financing the enterprise. Mr. Merritt, the leading advocate of a Provincial paper currency, was the most active promoter of the canal. Hence, when other sources of capital failed, and the limited Government aid was exhausted before more had been secured, Mr. Merritt and his associates fell back upon an issue of paper money, based upon the actual accomplishment and the future prospects of the canal. This paper was issued, apparently about the end of 1835, in the shape of small debentures, a common device in some of the American States. They were to be paid at the end of a year, with interest. But to issue is easy, to redeem hard, and the times not improving the paper was not redeemed. There was some talk of redeeming it in 1837 by the issue of Govern-

ment debentures in aid of the canal ; but this was only partially, if at all successful, there being no eager market for Upper Canada debentures at that time. However, the subsequent history of Welland canal money belongs to a later period.

Still another direction in which the prevalent monetary heresy of the time was leading the unsophisticated, and for which there was also considerable American precedent, was that of the municipal issue of paper money.

The corporation of the recently chartered city of Toronto was, even in those days, inclined to be somewhat extravagant, was at any rate always outstripping its revenue. The banks being partly unwilling and partly unable to afford further assistance, the corporation decided to adopt the panacea of the age and issue money of its own. About the end of May, 1837, a measure was brought before the city council to authorize the corporation to issue \$6,000 in bills of credit, in the shape of one dollar notes, payable with interest within six months. These notes were to be receivable at the city treasury for taxes, fines, or any other debt due to the city. The issue was represented as merely an anticipation of the revenue of the year, and was intended to give employment to many who were then idle. Before the middle of June the Toronto city dollars had appeared. They were made payable to Alderman Denison, and were signed by Mayor Gurnett and Aldermen McCord and Washburn.

However, when the six months for which they were issued had expired, the city council had come to the conclusion that this was too easy and effective a manner of escaping financial embarrassment to be lightly resigned. Excusing themselves on the ground of a purely philanthropic desire to add to the welfare of the country at large, by furnishing it with a much needed supply of sound money, they decided to continue and enlarge their issues in a more permanent form. An extra issue was authorized to the extent of \$16,000, in one and two dollar notes. They sent to New York to procure regularly engraved plates. These notes continued to circulate for a number of years.

When Kingston was incorporated, it too, followed the example of Toronto and issued civic notes in 1842.

Though McKenzie was a strong opponent of most of the issues of paper money, yet when he came to set up a government

of his own on Navy Island he discovered that even provisional governments are not always sufficiently provided with specie to meet the pressing needs of the hour. Hence even he resorted to the issue of paper money, which with modest assurance was made payable four months after date at the City Hall in Toronto.

We have now pretty fully covered the very varied, but, in the end, instructive and sobering experiences of the Canadian Provinces with banking and paper money during the crowded period which preceded the union of the Provinces. It only remains to deal with the vicissitudes of the metallic currency and exchange from 1828 to the Union, and we shall then be prepared to take up the monetary history of United Canada.

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NAPOLEON AS FORGER

THE exigencies of war condone a multitude of sins. We almost forgive Frederick of Prussia the vindictiveness of his designs for the stubborn heroism of his defence. The magnificence of Napoleon's exploits has well nigh made history forget the holocausts of blood that stained the fields of Europe in the tumultuous decade of his power.

Napoleon's military genius has for a century commanded the admiration of the world. It remains for us now to marvel at the resources of his cunning when he stands convicted before us as a royal forger and consummate master of all the stealthy methods of that craft. The textual proofs of his perfidy have recently been collected and cogently displayed by M. Louis de Royaumont in "*L'Humanité Nouvelle*." The contemporary records from which he derives his information are unimpeachable, and the evidence as to Napoleon's guilt is irrefutable and final.*

His plan was sublime in its simplicity. All Europe was his battlefield, and to pour his resistless battalions over the continent was a mere pastime for his genius. Yet all conquest was barren, and the domination of the civilized world an ambition beyond his grasp, while commerce was still unchecked and filled the coffers of his enemies with gold. He determined therefore to make insidious warfare upon the wealth of Europe, and we now possess sufficient data to establish his methods of procedure. These were Machiavellian in the extreme.

The Austrian campaign of 1805 furnished Napoleon with

*1. "The Indiscreet Chronicle of the XIX century," 1825.

2. "The Memoirs of Count Allonville," 1840.

3. "Papers found at the Tuileries," 1870 (containing the confessions of the engravers employed in counterfeiting the foreign bank notes).

4. "The General History of the Peace Treaties," drawn from the papers of the Count de Garden, Brussels, 1877.

5. "Unedited Letters of Napoleon," published by Plon, 1897.

the opportunity for a first experiment. He profited by his short sojourn in Vienna to study the mechanism of Austrian finance, and especially of the Bank of Vienna. This bank was the mainstay of the country in times of peace, and its support in times of war. To break this prop was to shatter the resources of the country, and its credit once destroyed all resistance to his conquest would be of no avail.

The possibilities for fraud seemed reduced to a minimum by the precautions of the authorities. To frustrate, or at least to render forgery more difficult, the public was kept officially informed of the number of notes issued; and this number was never exceeded without further official notice. These precautions were scarcely an obstacle to the Emperor.

With Vienna at his feet Napoleon could have closed instantly the doors of the National Bank, thus temporarily crippling the resources of the country. He might likewise have made seizure of all the presses and stamps in the bank's possession, and have shattered its credit at a blow. His design was more sinister, namely, to employ the enormous credit of the bank as a weapon for its own destruction, and for the ultimate ruin of the country itself.

The natural procedure for a victorious general is to levy an extraordinary tax upon a defeated Government in compensation for the expenses incident to the campaign. Napoleon went a step further than this, and immediately assumed "the ordinary revenues of the country in addition to the extraordinary contributions which he had imposed."

He did not thus burden himself with the delicate administration of Austrian finance without a purpose. The ordinary routine of business was in no wise disturbed. The officials of the bank were preserved in their positions. The same substantial guarantees were offered as of old, and the country, lulled into a fancied security, poured its revenues unstintingly into the coffers of the bank, which still maintained its wonted supply of new notes.

However, an agent of Napoleon, General Clarke, the Duke of Feltre, and afterwards Minister of War, was appointed Governor of Vienna. He was in reality the Chief of Police, with active surveillance over the Austrian bank. With him came several skilled French workmen, who lodged in one of the Viennese

suburbs. Their origin and their occupations were carefully concealed. Every evening after the departure of the Austrian engravers, Clarke's agents removed the engraving plant. This they carried to the French mechanics in the suburbs, who manufactured during the night a facsimile of the originals, which were restored to their proper place before the return of the Austrian workmen. In a short time a complete facsimile of the original plant was secured, and the engravers returned to Paris prepared when the time should arrive to issue Viennese notes in any number.

Meanwhile, as a result of the death of Fox, England was again drawn into the vortex of continental warfare. The coalition of 1806 was stimulated by English gold, and had as active participants Prussia and Russia. On the 8th of November Napoleon entered Berlin, imposed upon the allies a tax of 160 millions, and by the famous Berlin Decrees established the blockade of the continental ports whereby he fondly hoped to shatter Britain's commerce. "Perfidious Albion" was never absent from his thought. By the blockade he was confident of ruining her commerce, and her financial credit he hoped to destroy by an overwhelming distribution of forged notes.

In this case corruption, not force or midnight cunning, was employed. An officer of the Bank of England was bribed, and delivered to the French agent the matrices and models of the engraving plant. These were expedited to Paris, where a similar plant was constructed and held in reserve with the Austrian material already secured.

Napoleon embraced in this vast system the ruin of his three great enemies, the English Government and its allies Russia and Austria. Prussia was too poor to concern his thoughts. At this period his manipulations with Russian credit had not begun.

This same campaign of 1806-1807 furthered his designs in that direction. "The Russians boast that they will come to us; we shall spare them half of the way." Eylau and Friedland were the sanguine tokens of his prophecy. The abortive peace of Tilsit was signed on the 8th of July, 1807. With the signing of the peace Napoleon's opportunity for action had come. The Duke of Rovigo was summoned to play at St. Petersburg the role which Clarke had played at Vienna. Accredited there as

diplomatic agent, his real function was to procure the materials necessary for the forging of Russian notes. This he did without arousing suspicion, and the clumsily executed plant was swiftly imitated and despatched to Paris. All this collected equipment, therefore, was ready in 1807 to be utilized against the Governments of London, Vienna, and St. Petersburg.

As yet, however, no forged issue had been made. The matrices and plant were ready, and agents were abroad to assist in the distribution of the false notes. There still remained to install a press and an engraving office, and to await a propitious season for the launching of the enterprise. The chief problem was to establish in the heart of Paris, within reach of the central administration and of the Chief of Police, an office shrouded in silence and in mystery, and to find a multitude of workmen whose devotion and discretion should be beyond suspicion.

This task was solved for Napoleon by Fouché, his Chief of Police. With Fouché, then recently created the Duke of Otranto, was associated a subordinate named Desmarets, at that time chief of a division of the secret police, a man of great influence and with an admirable reputation for cunning.

Number 25 of the Boulevard Montparnasse was an uninhabited house. Behind this house, and connected by a long passage-way was an inner building well sheltered from curious eyes. Here they established their presses, and to ensure absolute secrecy the men and women employed never left the work-rooms by day or night. The relations of the Government to this house were concealed from the municipal authorities. Whatever confidence Napoleon may have had in the police charged with the safety of his own person and of his Government, three agents alone shared this secret: Fouché, Desmarets and Terrasson.

Meantime military events marched fast upon the continent. Two false steps of Napoleon alone saved England from disaster—the occupation of Rome and the Spanish war. By his imprudent ejection and imprisonment of the Pope he alienated the religious sympathies of Europe. The priests found it, therefore, no difficult task to fan the revolt in Spain to such an extent that to save the situation Napoleon's presence there was imperative. He withdrew his army from Germany and quickly recovered the ground which he had lost. England's position became perilous in the extreme.

In her dilemma she offered Austria one hundred millions to retrieve the disasters of 1805. Austria's acceptance was her own ruin, but England's salvation. While Napoleon swept like a flame through Austria, England and the Spaniards were victorious in Spain, and the French were forced to evacuate the country.

It was at this crisis in the affairs of Austria that Napoleon resorted for the first time to the use of forged bank notes. Three recently published letters of Napoleon, dated from Schoenbrunn in 1809, confirm his connection with this underhand treachery, and make it impossible to throw the responsibility of the crime upon his subordinates.

I

"TO COUNT FOUCHÉ

SCHOENBRUNN, Sept. 5, 1809

"I had lately given you various instructions with reference to the Vienna bank notes; I have heard nothing further of them; I suppose that you have kept this object in mind. I desire you to send me here all those which exist, and that you should carry out with all zeal the instructions I have given."

II

"TO COUNT FOUCHÉ, MINISTER OF POLICE

SCHOENBRUNN, Sept. 6, 1809

"Marc will send you a collection of all the different kinds of bank notes. You will find herewith the necessary instructions. I wish you to establish a plant for the manufacture of these notes of all values to the amount of 100 millions. You would have to set up a machine capable of turning out 10 millions a month. It is with paper money that the house of Austria was able to make war against me; it is with paper money that she will still be able to make war against me. That being so, it is my policy in time of peace as in time of war to destroy this paper money and to oblige Austria to return to the system of specie, which of its very nature will compel her to reduce her army and the foolish expenses by which she has compromised the security of my dominions. My intention is that this operation shall be performed with secrecy and mystery. However, the end that I have in view is rather a political end than an advantage of specu-

lation and profit. This object is extremely important. There is no tranquility to be hoped for in Europe while the House of Austria can secure advances of 3 to 4 hundred millions by the credit of her paper money.

"Send an intelligent and skilful agent to receive while we are here all the instructions necessary to give this affair the extent which I wish to give it, and which will have a great effect."

III

"TO COUNT FOUCHÉ, MINISTER OF POLICE

SCHOENBRUNN, Sept. 23, 1809

"Marc sends you what you ask.

"In peace as in war I repeat to you that I attach the greatest importance to having 100 or 200 millions of notes. That is a political operation. When the House of Austria has no more paper money she will no longer be able to go to war. You may establish the workshops where you will, in the Château of Vincennes for example, from which place the troops would be withdrawn, and where no one would be allowed to enter. This stringency might be accounted for by the proximity of prisoners of State. Or in any other place. But it is urgent and important that you should occupy yourself seriously with this affair. If I had destroyed this paper I should not have had this war."*

This correspondence took place at a time when Napoleon was contemplating a matrimonial alliance with the royal house of Austria!

It is a remarkable fact that while the Emperor was complaining that his earlier orders with reference to the forged notes had not been executed, Francis II on his side was complaining at the confusion wrought by the invasion of 400 millions of forged papers at the very commencement of the campaign of 1809. Was Napoleon the dupe of his own subordinates?

The suspicions of Francis pointed in one direction. After the marriage of his daughter, he sent Metternich to France under the pretext of acting as chaperon to the young Empress, in reality to take advantage of the good favour of Napoleon and

*Léon Lecestre, "Unedited Letters of Napoleon"—Plon & Nourrit, 1897.

obtain an assurance from him that no more forged papers would be issued.

A very pretty comedy ensued. Metternich on June 10, 1810, addressed a letter to Champagny, Napoleon's Minister :

"A short time after my arrival in Paris, the Emperor did me the honour to speak to me of a large fabrication of Vienna bank notes. His Majesty declared that this measure could have no result save at a period very different from the present, and deigned to make me hope that the mass of forged notes would be returned to me. Since then I have had occasion to inform your Excellency of the issue of a sum equivalent to nearly 200 million florins of the same notes. The investigations made by our government to discover the distributors have been seconded by the French police. Several guilty persons have been arrested in Paris. The investigations ordered in this connection by his Majesty are a further proof of the friendly sentiments which animate him for the Emperor my master.

"His Majesty has just commanded me to make known his desire that the French Government should restore the confidence of Austrian finances concerning the possible recurrence of such an abuse, though entirely involuntary, by restoring the forged notes, the stamps, etc.,—all things of no value in the hands of a friendly Government whose surveillance cannot always be a guarantee against abuses such as those which we have lately experienced."

The style of this letter is heavy, but the inference is clear. Despite all Metternich's efforts to secure possession of the offending plant he had to content himself with Napoleon's dubious assurance that it had already been destroyed. "Your Majesty," he wrote to Francis, "will deign to observe that all insistence was vain in a matter beyond our control. It only remained for me to hold the Emperor by his personal promise, and I repeated to him his words. Seeing my persistence he began to laugh, and said to me : 'It seems to me that you have not too much confidence in me. Very well then—give my word as a sovereign to a sovereign that everything has been destroyed.'"

Napoleon now deemed it expedient to turn his insidious weapon against England, who alone triumphed amidst the general ruin. The intricate engraving upon the English bank

notes and the bank's elaborate precautions against fraud rendered his task doubly difficult. Skill and circumspection were necessary to reproduce the notes and to distribute them without immediate detection. The services of a highly skilled engraver, named Lale, were engaged, whose personal account of his own share in the proceedings affords us a further insight into the devious methods resorted to by Napoleon and his confidential agents. Fouché having fallen into disfavour Lale received his authorization from the new Minister, Savary, the Duke of Rovigo. The terms of this authorization are sufficiently significant.

"Mons. Lale being commissioned to prepare very secret documents for His Majesty's Cabinet must communicate with absolutely no one save with the artists who are necessary to the performance of the work. If, for any motive whatever, an officer of the civil or judicial police should present himself as the bearer of orders of any nature M. Lale must show him the present requisition, and the said officer is expressly forbidden to penetrate into the premises where the work is being performed, or to put any question relating thereto, or which might impair the secret; but is commanded on the contrary to retire immediately to the authority who has sent him, who will place everything before his Excellency the Minister of Police, undersigned, and will take his orders.

"Given at the bureau of the general police of the Empire, Aug. 1, 1810.

"DUC DE ROVIGO"

Lale's difficult task accomplished, the notes were thrown upon a dusty floor, and swept about with a broom until they grew soft and had the appearance of having passed through many hands. They were then tied in bundles and sent to the agents who were charged with their distribution in England. These agents were two Frenchmen, Bernard and Blanc, and a Hamburg Jew named Malchus.

If, as a government measure, the issue of forged paper is a new idea, it is, as a means of vulgar theft, an idea as ancient as money itself. The Bank of England therefore took infinite precautions to obviate all possible fraud.

Each time that a note in circulation returned it was at once verified. If it was recognized as good, they made a record of it

and destroyed it. If on the contrary it was recognized as false, they at once began an investigation. Their method of verification was alike ingenious and sure. A bundle was made of the number of notes which would probably be required within the twenty-four hours. The notes were furnished with numbers which were inscribed in a register. They were then piled together in the order of their numbers, and the bundle was perforated with needles to form a design. On account of the natural elasticity of paper these holes are not visible in the isolated notes. When all these notes were again returned, they placed them in their order in the bundle and subjected them once more to the needle process. The perforations of the needles adapted themselves to the old holes, if the notes were good. The presence of one false note in the bundle was indicated by the resistance of the unpierced paper.

It was necessary therefore to place the false notes as far as possible from London in order to retard the verification which must necessarily expose the fraud. The three French agents received their instructions accordingly.

To complete these measures of prudence the agents were ordered to use the forged notes for the purchase in English ports of British merchandise which remained accumulated in store-houses during the blockade. The agents thus acquired for nothing vast quantities of these products, but instead of destroying them, according to their instructions, they introduced their prohibited purchases upon the continent and sold them with double profit. The French Government thus found itself the dupe of its own agents, but was powerless to prevent the abuse. On the contrary, on more than one occasion it was forced to extend its protection to the smugglers.

Bernard and Blanc did not await the disclosure of the forgeries, but leaving their accomplice, Malchus, to his fate on the scaffold they fled in all haste to France. At Dunkirk they were held by the commissioner of police as smugglers, and news of their capture was telegraphed to Paris. Great was the astonishment of the worthy M. Martin to receive the swift reply, that he should have the greatest consideration for the prisoners, and that in order to rehabilitate them in the eyes of the population, he should place his carriage at their disposal for Paris where the Minister awaited them.

The poor commissioner, ashamed and stupefied, complied. The two agents of the Emperor accepted his carriage and failed to return it.

About this period a proposal was made to the engraver Lale that he should divert his attention to the fabrication of Prussian notes. That Prussia was his sworn ally at the time did not deter the Emperor from his design, but Lale, with a remnant of honesty pronounced the task beyond his powers.

The Count de Garden and the engraver Lale furnish us with the details of the Emperor's operations against Russia during the campaign of 1812. "In marching upon Moscow," writes the Count de Garden, "Napoleon had a threefold design. He wished to surprise and crush the Russian armies, to levy immense contributions in the very heart of the wealth of the Empire, to expedite this new treasure with all speed to France; then by a shadowy and incredible machination, unheard of in the records of Machiavelli's politics, and the curious details of which we shall later explain, he was to throw the finances of the Empire into inexplicable confusion, and ruin for many years her credit, her commerce, and her political future. Let us not suppose that the last part of this plan was chimerical; it was an artifice that Napoleon had long since essayed with success. In the war of 1809 he had used it as a powerful auxiliary against Austria, whose finances, reduced to a deplorable condition, forced the public treasury to repeated bankruptcy which involved even the failure of the Bank of Vienna."

Russia not possessing an external commerce as great as that of England and Austria, it was more difficult to distribute the forged notes in that country. Napoleon as usual was equal to the occasion. Feigning the capture of a number of private or municipal fortunes, with these papers, that were supposedly raised by a forced contribution, he paid his army, which in turn employed these forged notes for all purchases made upon Russian territory. It is supposed that 500 millions of notes were taken to Russia, but in the precipitancy of flight the majority of these were burned at Moscow, or left concealed at Torgau. Russia's policy of destroying her own wealth along Napoleon's line of march had checked the distribution of these enormous sums.

It is not to be supposed that discreditable complications issuing from the initial fraud were swift to disappear. Illicit commerce in the forged notes was continued, especially in Holland, long after the original purposes of the Emperor had been served. The most flagrant of these cases was carried to Paris, and there stifled, lest investigation should reveal the details of the clandestine office on the Boulevard Montparnasse. "They did not speak of the affair to Napoleon," said the Count de Garden, "enough cares of another importance absorbed the thoughts of the head of the State."

The Emperor's edifice was crumbling to a fall. When the final crash came a royal commission was established with representatives from England, Russia and Austria, to investigate the fraud in all thoroughness. They first addressed themselves to the director of police in Hamburg, who had been instrumental in unearthing the serious frauds perpetrated there. This official, however, displayed a strange reserve in the dread of giving umbrage to the Restoration Government in France. Application was thereupon made to Louis XVIII, who immediately named a commission before which the Hamburg chief of police was compelled to make categorical reply. However, the Governments interested recognizing that there was only one guilty individual, Napoleon, were not exacting. They demanded merely that the material be restored to them, and since the chief forger was not in a position to resume his labours they there let the matter rest. The Court of Paris, before whom Joseph Castel, the chief Hamburg sufferer, had appeared, was relieved by the opportune death of the appellant from continuing the enquiry.

PELHAM EDGAR

August, 1901

GILBART LECTURES, 1901*

No. III

BY SIR JOHN PAGET, BART., BARRISTER-AT-LAW

WHEN A DEMAND NOTE IS OVERDUE—MEANING OF “IN HIS OWN RIGHT.”—SECTION 61 BILLS OF EXCHANGE ACT

TWO somewhat curious points respecting bills and notes arose last year in a case called *Nash v. De Freville*, in the Court of Appeal, which is reported 1900, 2 Q.B. 72. One of them deals with the question of when a bill or note payable on demand is overdue, and the other with the true meaning of the words “in his own right” in section 61 of the Bills of Exchange Act.

STATEMENT OF FACTS

The facts of the case were exceedingly complicated. The defendant in 1895 and 1896 gave one Peed, a solicitor, to cover advances, three promissory notes payable on demand, for £800, £500 and £500 respectively, Peed undertaking not to negotiate any of them. On February 9th, 1897, defendant gave Peed two promissory notes for £1,500 and £2,000 respectively, in substitution for the former three, and to cover further advances. These two new notes, like the old ones, were not to be negotiated, and were payable on demand to Peed or order. The defendant never asked for the return of the first three notes. In March, 1897, Peed negotiated all the five promissory notes to the plaintiffs for a sum of £4,500, by endorsing them generally and handing them to the plaintiffs. In July, 1897, defendant paid Peed £4,000 to meet the £3,500 and interest due on the two substituted notes for £2,000 and £1,500, but he never asked for or obtained them back. In September, 1897, Peed and the plaintiffs agreed the amount due for principal and interest from Peed to the plaintiffs on the five notes at £5,581.

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Peed gave the plaintiffs his cheque for that amount, and they handed the notes to him. Peed sent the five notes by post to the defendant, who received them on September 29th, and thinking the transaction was closed, burnt them. The same day Peed absconded, and his cheque when presented was dishonoured. The plaintiffs sued defendant on the notes and for conversion.

So the position stood thus: the plaintiffs were, until they parted with the notes to Peed, holders of them *bona fide* and for value. Peed, as the Court held on the facts, knew his cheque would never be met, and got the notes from the plaintiffs by a fraud; that fraud, on the principles we have been considering, entitled the plaintiffs, when they discovered it, to disaffirm the transaction, and to resume their rights and property in and to the notes, unless the rights of some third party had intervened in the meantime. I do not find that in this case the point that there had been a fresh disposition of the notes was raised, as in Tate's case. The defendant took higher ground than that. He said that either the notes were discharged under section 61, which provides that "when the acceptor of a bill is or becomes the holder of it, at or after maturity, in his own right, the bill is discharged," the maker of a promissory note standing, of course, in the position of the acceptor of a bill under section 89; or else that the defendant, although the original maker, was a *bona fide* holder for value of the notes by transfer from Peed, subsequent to the fraud, and therefore had a better title than Peed, such a title as no repudiation could affect. All the notes, as I said, were endorsed generally by Peed, so that there was no difficulty about any endorsement.

The plaintiffs, of course, disputed all this; they said, among other things, that the defendant took the notes when overdue, that he gave no value for them, that he did not take them in his own right within the meaning of section 61, and therefore they were not discharged, that he had no better title than Peed, and therefore the disaffirmance of the contract by the plaintiffs was as effectual against the defendant as it would have been against Peed and revested the property in and right of action on the notes in themselves.

The late Lord Chief Justice, Lord Russell, decided in favour of the defendant, on the ground that the notes had been dis-

charged, the defendant having become the holder of them in his own right after maturity, within section 61. The plaintiffs appealed, and the Court of Appeal reversed the judgment of the Chief Justice and gave judgment for the plaintiffs for the amount of the five promissory notes, £5,300 in all.

REMEDY ON LOST OR DESTROYED NOTE

It was a somewhat exceptional feature of the case that the action should have been brought and succeeded on the notes by persons not having them in their possession, against the person who had them last and had destroyed them. At common law, if a negotiable bill or note was lost, no action could be maintained either on the instrument itself or on the consideration for it, even if it were lost when overdue, but there was a remedy in equity on giving an indemnity. Where, however, the bill or note was shown to have been destroyed, it would seem that a remedy lay at common law as well, though Mr. Chalmers treats this as somewhat doubtful. Sections 69 and 70 of the Bills of Exchange Act only deal with lost instruments, while section 51, sub-section 8, authorizes protest on a copy when a bill is lost or destroyed, or is wrongfully detained from the person entitled to hold it.

I do not think there is very much ground for Mr. Chalmers' doubt in the case of a bill proved to be destroyed. The reason assigned in the lost bill cases was that the plaintiff, to be entitled to sue, must have been holder at the beginning of the action, and in a position to deliver up the bill when he was paid. That, of course, applies equally to a destroyed bill. But I think that even the common law courts had also in their minds the danger of a defendant who had to pay on a lost bill having to pay someone on it over again. Thus they held that the loss of a non-negotiable note was no bar to judgment being recovered on it. And there are references in other cases of lost bills to the inconvenience and danger run by a defendant if he had to pay without getting the bill back. But they had no power to force the defendant to accept an indemnity, though if the plaintiff went in equity, and offered one, equity would make defendant give a new bill or pay the lost one. But when a plaintiff went in equity on a destroyed bill, the Equity Courts would not help him, because they said he had a perfect remedy in law. And, of course, if the

bill were destroyed, there was no need of indemnity. And there are common law authorities recognizing the distinction, and going to show that a plaintiff could always recover on a destroyed bill without giving an indemnity. I think that is the right view. There can be no earthly reason why a man should not recover on a destroyed bill as well as on a lost one, and our courts now administer law and equity indifferently. I think this is the view meant to be adopted by the Bills of Exchange Act, and that the reason it only refers to lost bills is because it considers the case of destroyed bills to have been clear under the old law. Anyway, in this particular case the defendant could never have set up the destruction of the notes by himself. If the plaintiffs had a right to them, he had no right to destroy them, and could not plead his own wrong, and if not liable on the bills, he would have been liable for the same amount as damages for conversion.

Then the two main points were as follows:—

1. Were these notes discharged under section 61 in the circumstances in which they came to the defendant's hands? Remember the wording of that section which I read you before: "When the acceptor of a bill is or becomes the holder of it at or after its maturity in his own right, the bill is discharged." In this case we must, as I said, read "maker" for "acceptor," and "note" for "bill," under section 89.

Defendant was the maker, that is all right. And he became the holder of the notes. I think we may concede that, the Court seem to have done so. And he became the holder at or after the maturity of the notes. A promissory note payable on demand attains maturity as soon as it is issued. That was laid down by

WHO IS A "HOLDER IN HIS OWN RIGHT"

the Court of Appeal in *Edwards v. Walters*, in 1896. Then did he become the holder *in his own right* within the meaning of the section? Now, Mr. Chalmers' note on these words is as follows:—"At common law, if the acceptor or maker became the administrator of the holder, the bill or note was not discharged, but if he became the executor of the holder, it was discharged. Probably the words 'in his own right' negatived the common law rule as to executors." Again, he says, at page 121: "Any

bill is discharged when the acceptor is or becomes the holder of it at maturity." The old rule as laid down with regard to executors by Mr. Chalmers is no doubt correct. The bill or note was considered to have been paid by the executor to himself, and to have become assets in his hands.

And I think I am correct in saying that the interpretation put upon the words "in his own right," by Mr. Chalmers, has been hitherto regarded as the correct one. There was no very obvious reason why executors should stand on a different footing to administrators in this matter, except perhaps that a testator selects his executors and an intestate does not select his administrator, and "in his own right" seemed very fitting words to bar the discharge of a bill by reason of an executor becoming a holder *quá* executor, distinguishing in fact between the case where a man became holder in a representative capacity and where he became holder in his own capacity. But the conclusion that the section applied to every case where a maker or acceptor became a holder otherwise than in a representative capacity, has been shown by the Court of Appeal to be quite untenable. Sir A. L. Smith, M. R., is contented to say that the section did not apply in the case before him, and did not mean in contradistinction to a representative right as argued for the defendant.

THE WORDS MEAN MORE THAN "NOT IN A REPRESENTATIVE CAPACITY"

Collins, L.J., says: "'In his own right' must mean something more than 'not in a representative capacity' as executor, for instance. It could not possibly mean that if a thief stole the note from the holder, and placed it in possession of the maker at or after maturity, the note should *ipso facto* be satisfied, and yet this would be the result if the words 'in his own right' are to bear the limited meaning suggested. I think 'in his own right' must mean a right not subject to that of anyone else, but his own, good against all the world."

Now, when you look at it in that light, you see at once that this interpretation must be the right one.

A man is the holder of a bill which is, or has become, payable to bearer, when he is in possession of it, and so Lord Justice Collins' *reductio ad absurdum* is a fair one. And I think the

reason which underlies section 61 leads us to the same conclusion. The reason why a bill is discharged by coming into, or being in, the hands of the acceptor at or after maturity, is because a present right and liability united in the same person cancel each other. As Best, C.J., once said: "There is no principle by which a man can be at the same time plaintiff and defendant." but that position obviously predicates a right of action as well as a liability, and, as shown by Lord Justice Collins, it by no means follows that a person who answers the description of a holder, other than in a representative capacity, would necessarily have any right of action on the bill. Such right involves a good deal more than mere possession of the bill otherwise than in a representative capacity, it involves, as Collins, L.J., says, a right against all the world. A man does not hold a thing in his own right when another man has a right to take it from him. If you look at section 37, you will see that it says that where a bill is negotiated back to the acceptor, he may, subject to the provisions of the Act, re-issue and further negotiate the bill. This section 61 is, as Mr. Chalmers points out, one of the provisions of the Act to which this section is subject, and I think this points to the sort of way in which the acceptor must have come into possession of the bill in order that section 61 may take effect, and the bill be discharged. It must come to him by negotiation, or

WHAT THEY DO MEAN

if not, at least by some analogous process. I think his rights in it must be such that if he were not himself the acceptor, he could have sued the acceptor, if he had taken the bill before maturity. It comes very near to saying he must be in the position of a holder in due course, except that he may have taken the bill after maturity. So note this case of *Nash v. De Freville* in your Chalmers', against section 61, and bear it in mind in case any of you ever have anything to do with amending the Bills of Exchange Act, because "in his own right" are certainly not apt words to denote the position we are driven to conclude they mean, particularly when that position appears almost identical with that described elsewhere in the Act by such very different terms as holder in due course, or *bona fide* holder for value.

DEFENDANT WAS NOT HOLDER IN DUE COURSE

But the defendant in this case said he was a holder in due course, a *bona fide* holder for value of the notes, and if he could have made this out he would, of course, have won, either because the notes would then really have been discharged under section 61, or because his rights as such would hold good against any repudiation of the contract by the plaintiffs. The plaintiffs said he was not holder in due course, because, first, he had not given any value subsequent to the fraud; second, because he took the notes when overdue.

NO VALUE GIVEN AFTER FRAUD

Did he give value? As the Court said, he gave value for the first three, when in February, 1897, he gave the second two instead of them, and he gave value for those two when in July, 1897, he gave Peed the £4,000 to pay them off; but what value did he give after the fraud on the plaintiffs in September, 1897, and when he got them back? The defendant was driven to rely on the somewhat artificial doctrine adopted in the case of the *London and County Bank v. the London and River Plate Bank*, in 1887. There negotiable securities had been abstracted from the defendants and deposited as cover with the plaintiff bank, recovered from the plaintiff bank by the depositor on giving his own bogus cheque, and restored to the defendant bank by the same person to avoid detection. When the plaintiff bank, on the cheque being dishonoured, claimed the negotiable securities, they failed because the Court held that the defendant bank were *bona fide* holders for value, the value consisting in this, that not only could the defendant bank have prosecuted the gentleman who abstracted the securities, and subsequently restored them, but they might also have brought an action against him for wrongful conversion of them. When the securities came back to them they lost this right of action, because they could not sue another man for what was in their own possession. The Court of Appeal assumed that, although they did not know of their return, they accepted it as a discharge of the wrongdoer's civil liability to them, and decided that this release of the right of action constituted sufficient value. And the facts were certainly

somewhat curiously analogous to those in *Nash v. De Freville*. But the Court of Appeal pounced on the difference. The defendant De Freville had entrusted these notes to Peed, not merely for safe custody, but as security. He had put it in Peed's power to negotiate them to the plaintiffs. Peed broke his promise not to negotiate them, but that was not a sufficiently criminal act to break the chain of causation. Again, the defendant had been negligent in not getting back the first three notes from Peed when he gave him the second two in lieu thereof. Therefore the defendant was estopped as against the plaintiffs from setting up that Peed had no right to negotiate the notes, or that he converted them, or that he, the defendant, had any right of action against Peed which he waived when he took them back. The case of *The London and County v. The River Plate Bank* was different because there the defendant bank never knew that their securities had been abstracted, never entrusted them to anybody, but simply had them stolen, and so were not subject to any such estoppel. Moreover, the Court pointed out that Mr. De Freville, having, as above stated, given real consideration for all the five notes, there was no room for an implied consideration. Lord Justice Collins gave a very apt illustration on this point, saying: "If someone steals my boots, and afterwards replaces them, one might perhaps, but not, I think, without some strain on the imagination, conceive that I impliedly release my right to complain of the theft, in return for the restored boots, though I did not know they had been stolen. But if I buy and pay for a pair of boots, and the bootmaker delays a fortnight before he sends them home, do I give two considerations for them, one when I pay for them, and a second when I receive them? Or only one? It seems to me that in such a case there is no need to search for an implied consideration. There is one in fact, and only one, namely, the price. So here the only consideration given by the defendant was the sum which he gave in July, which entitled him as against Peed to a return of the notes."

NOTES IN THIS CASE OVERDUE WHEN RECEIVED BACK

And the Court further held that when the defendant, De Freville, received the notes back from Peed, they were overdue, so that on this ground also he was debarred from the

character of a holder in due course. The dates of the notes, which were promissory notes payable to Peed or order on demand, were, as I told you, as follows: One in January, 1895, one in January, 1896, and one in April, 1896. The two which were given to satisfy these were similar, and were both given February 9th, 1897. The whole five were restored to the defendant on September 29th, 1897. Were they then overdue? Sir A. L. Smith says, yes; because the defendant must have known they were overdue, as he had himself paid them off, the first three in February, 1897, by giving the second two, and those in July, 1897, when he gave the £4,000. Collins, L.J. relied on the fact that all the notes came back to the defendant long after he supposed he had satisfied them. The Lord Justice deduces from the giving of the second two notes that there had been a demand made on the defendant for payment of the first three, and he seems to infer that the payment of the £4,000 on the later two notes was at least equivalent to a demand for that payment. Of course, in this particular case this is pre-eminently reasonable. Whether the notes were strictly describable as overdue or not, the defendant must be held to have taken by way of negotiation notes which he himself knew, or thought, he had discharged months before. He knew nothing about their having ever been negotiated by Peed, he took them and treated them as waste paper, and that was absolutely incompatible with his assuming the position of a *bona fide* transferee of a current instrument.

WHEN DEMAND NOTE ORDINARILY BECOMES OVERDUE

There are, however, some remarks by Lord Justice Collins which seem to require further consideration. He says: "There is authority that a note payable on demand is after demand overdue," and he quotes two cases, and then continues, "As soon as demand has been made, the time for payment has arrived, just as much as if the note had been made payable on a particular day which had passed." Now, of course, from the grammatical point of view this is correct. If a note is payable on demand, and a demand is made, payment is then due, and in that sense the note is afterwards overdue. It is something like a bill payable on the occurrence of something which, though uncertain in date, is bound to happen some time or other. But it is somewhat

startling that the fact of payment of a note payable on demand having been demanded should of itself make that note overdue in the sense of affecting a subsequent *bona fide* taker for value with equities on the note. There is absolutely nothing on the face of the note to show that such demand has been made. The whole scheme of the Bills of Exchange Act seems against such a proposition. A promissory note on demand is not like a cheque, which is intended for speedy presentation; a promissory note payable on demand is recognized as being intended for a continuing security. It is only when a note of that nature has been endorsed that it must be presented within a reasonable time after the endorsement, and then only in order to charge the endorser. Section 86, sub-section 3, distinctly says: "Where a note payable on demand is negotiated it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue." If such a note were overdue when demand has been made, say, a week or two after its issue, this would be a most misleading provision.

Again, if the note has been presented and payment demanded, it must either have been paid or else dishonoured.

EFFECT OF PAYMENT.

Suppose it is paid. There is a general impression that payment of a bill or note is of itself an absolute discharge. Unquestionably section 59 does say: "A bill is discharged by payment in due course, by or on behalf of the drawer or acceptor." Mr. Chalmers says, page 118: "Payment and other discharges are sometimes spoken of as equities attaching to a bill, but this seems incorrect: they are rather grounds of nullity. That which purports to be a bill is no longer such, it is mere waste-paper." If that were so, then I conceive the fact that the note had been paid would afford an answer to even a *bona fide* holder for value, who took it after the payment. But I think that the rule is subject to this condition, that on payment the note or bill must have come back to the hands of the maker or acceptor. That at least was Lord Esher's view. In a case in 1889, dealing with a note payable on demand, he said: "It has been held that there may

be a defence to an action by a *bona fide* endorsee for value, where the note has been paid and has come back into the maker's hands before it was endorsed to the plaintiff. That defence does not arise in respect of any merits of the defendant, but because the Stamp Act has not been complied with. In such a case it has been held that there was a re-issue of the note, and therefore the case stood on the same footing as if the note had been issued for the first time without a stamp. The effect of non-compliance with the stamp laws is that the note is not a negotiable instrument, and is not capable of endorsement. Such a defence only arises when there has been a re-issue of the note. The note cannot be said to be re-issued unless it gets back into the power or control of the maker. If a negotiable instrument remains current, even though it has been paid, there is nothing to prevent a person to whom it has been endorsed for value, without knowledge that it has been paid, from suing."

So far this clearly seems an authority that apart from the question of re-issue, payment of a promissory note payable on demand does not make it overdue as against an innocent endorsee for value, and re-issue has nothing to do with being overdue.

EFFECT OF DISHONOUR

If payment of a promissory note payable on demand has been demanded and refused, then the note is dishonoured. But is it then overdue? Does the fact affect an innocent taker for value with notice? I must say I think it seems most unreasonable that it should. There is absolutely nothing on the face of the note to show that it has been dishonoured. The innocent taker for value is in absolute ignorance of the fact, and has no means of ascertaining it. And the contention that the fact of payment having been demanded and refused makes such a note overdue, seems to me strongly negatived by the language of the Bills of Exchange Act. Section 29 defines a holder in due course as one who has taken a bill complete and regular on the face of it in good faith and for value, before it was overdue, and without notice that it had been previously dishonoured, if such was the fact. Now, that clearly implies that the questions of overdue and previous dishonour, if any, are separate matters.

It is incompatible with the section to say, "True, you had no notice that the note had been dishonoured, but it had been, and therefore it was overdue." The point is so obviously dealt with by the one phrase that there seems no right to try and counter-act it by a forced interpretation of the other.

REVIEW OF CASES

Then, do the cases referred to by Lord Justice Collins support the opposite contention? Do they show conclusively that where demand has been made for payment of a promissory note payable on demand, an innocent person, ignorant of the fact, nevertheless takes it subject to all equities?

The first is *Borough v. White*, decided in 1825. There Bayley, J., said: "It is said that in *Banks v. Colwell*, Buller, J., treated a note payable on demand as a note taken by an endorsee after it was due; we are not, however, acquainted with all the circumstances of that case; payment might have been demanded before the endorsement, and indeed it is stated that several payments had been made on account. In this case no demand was proved."

Holroyd, J., said: "Then was this note overdue at the time of endorsement? I think that it cannot be so treated, for a note payable on demand is not open to the same suspicion as a note overdue, which is made payable at a particular time." Little-dale, J., says: "Neither do I think that the note was overdue; it seems to me that it was intended as a continuing security, and that we could not treat it as overdue without evidence of payment having been demanded and refused."

Two of these judgments do unquestionably seem to imply that after demand for payment of such a note and refusal, it is overdue, even as against an innocent taker for value.

The case referred to of *Banks v. Colwell* was decided by Buller J., on circuit, in 1788, and is incidentally mentioned in *Brown v. Davis*, in 1798. It would appear that in *Banks v. Colwell* the note was endorsed to the plaintiff a year and a-half after it was issued, the defendant was allowed to give evidence that it had originally been given for smuggled goods, and that payments had been made on it at several times. Buller himself

was one of the judges in *Brown v. Davis*, and he referred to his former judgment as follows: "Generally where a note is due, the party receiving it takes it on the credit of the person who gives it him. Upon this ground it was, that in the case in Cornwall, I held that the defendant, who was the maker, was entitled to set up the same defence that he might have done against the original payee. A fair endorsee can never be injured by this rule, for if the transaction be a fair one, he will be still entitled to recover. But it may be a useful rule to detect fraud whenever that has been practised." At this point Lord Kenyon, the Chief Justice, is stated to have made a gesture of dissent from this proposition, and Buller, J., says: "My Lord thinks I have gone rather too far in something that I have said, but it is to be observed that I am speaking only of cases where the note has been endorsed after it became due, when I consider it a note newly drawn by the person endorsing it." Then Lord Kenyon says: "I agree with that, with the addition of this circumstance, that it appears on the face of the note to have been dishonoured, or if knowledge can be brought home to the endorsee that it had been so. But I should think otherwise, if no notice can be fixed on the party; at least, I am not prepared to go that length at present." This shows pretty clearly what Lord Kenyon thought.

Then the second case quoted by Lord Justice Collins in *Bartrum v. Candy*, in 1838. That was the case of a note payable on demand. There is absolutely nothing in the judgments about this particular point, but there is a significant passage between bench and bar in the course of the argument.

Counsel for the defendant said: "A note payable on demand is overdue at least as soon as there has been a demand or presentment to the maker," and quoted *Borough v. White*. Patteson, J.: "It is not averred in the plea that the plaintiffs had notice it was overdue." Counsel: "The party who takes an overdue bill is liable to equities without proof of notice." Lord Denman, C.J.: "It usually appears on the face of it to be overdue." Patteson, J.: "Surely the plaintiffs must be fixed with a knowledge that the note had been presented, so as to be overdue." That again is not in favour of the proposition. Lastly, in that case in 1889 of which I spoke just now, Lord Esher certainly does say: "The plaintiff cannot be said to have taken the note

when overdue, because it was not shown that payment was ever applied for, and the cases show that such a note is not to be treated as overdue, merely because it is payable on demand, and bears date some time back." As you know, I have an almost superstitious reverence for every word Lord Esher spoke, and I cannot deny that these words do lend colour to the contention that after demand, whether complied with or not, a promissory note payable on demand is overdue, even as against a *bona fide* taker for value, who has not the faintest knowledge or suspicion that the demand has been made. I must confess that after giving the matter my best attention, it is still a mystery to me, and though I am not generally shy in such cases, I must refrain from expressing a definite opinion. I have quoted to you all the authorities I know. I cannot get away from some of them, while others seem to run counter to those. And behind the authorities there is ever present to my mind the anomaly, contrary to the whole spirit and scheme of the Bills of Exchange Act, that a *bona fide* taker for value should be ousted from his position by the existence of a fact of which he could not by any means be aware, and as to suspicion of which the nature of the document and the terms of the Act combine to put him off his guard. You may suggest that he is in no better plight when the bill has been discharged, and is wrongfully re-issued. Possibly he is not, as apparently the law of estoppel would not afford him a remedy against the re-issuer, the unstamped document not being a negotiable instrument; but the stamp laws indirectly protect him against this danger by prescribing penalties on anyone wrongfully re-issuing a bill, while in the other case he would seem absolutely defenceless and without remedy.

Again, it strikes one as extraordinary that payment, not operating as a discharge, because the note has not come back to the maker's hands, should not make the note overdue, but demand without payment should. One would have thought payment presupposed demand. Indeed, as I pointed out, Collins, L.J., in the case we have been considering, appears to have deduced the fact of demand from the payments made by the defendant, inasmuch as there was no definite evidence of demand in that case. However, there it is. I must leave you to judge

RESULT DOUBTFUL

or yourselves. I am sorry to conclude these lectures with an unsolved problem; but I prefer to do so, rather than to express an unqualified opinion on a subject on which I still entertain doubts. There is this consolation, that I imagine the main way in which you as bankers have to deal with promissory notes payable on demand, is that you take them direct from the maker, or makers, and hold them as a continuing and easily enforced security for overdraft or advances, in which case this overdue question is not so likely to arise. It is one I should nevertheless like to see put straight, either by a definite decision or by legislation.

QUESTIONS ON POINTS OF PRACTICAL INTEREST*

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee :

Individual carrying on business under a Trade name—Signature on cheques, &c.

QUESTION 466.—A person carries on business under the firm name of "The Quebec Lumber Company," and deposits a declaration to that effect in the Prothonotary's office in accordance with law. He uses this name in signing cheques and other documents, but without adding his own name thereto.

Is such a signature valid, and would a bank handling the bills or the parties accepting them, incur any risk?

ANSWER.—A person carrying on business under a quasi-corporate name such as the above binds himself when he signs his trade name, just as though he wrote his own name. The only question involved is one of proof: that is, that the name "The Quebec Lumber Company," was written by the person who carries on business in that name.

But although the signature without any addition is valid, it is to be remembered that in the matter of endorsing items for deposit in other banks, it would be contrary to the "Rules and Conventions respecting Endorsements," which require such an endorsement to bear in addition the name of some person, with an indication of the authority by which he signs. In the absence of this name the bank receiving the cheques would under the rules be entitled to a guarantee of the endorsement.

Joint and several promissory note—Right of a Bank as holder to charge to account of one of the promissors

QUESTION 467.—A Bank holds the joint and several note of A B & C payable on demand. Demand is made and the note dishonoured. Can the bank charge up this note to A's account, against A's wish, assuming it is in funds?

ANSWER.—A dishonoured bill on which a Bank's customer is severally liable can of course be charged against his account with the Bank.

"Cut" collection rates between Banks

QUESTION 468.—I recently received two letters from a branch of a certain Canadian bank offering to make collections in the town and vicinity, (where it had recently opened) first at 1/10 of 1%, minimum 10c. and later at 1/16, minimum .08c., evidently desiring to take this class of business away from a bank which had been established at this point for many years. I replied that we were quite satisfied with our present arrangements for collecting, and had no intention of making a change.

I would be glad to have your opinion as to the propriety of the action of a Bank in cutting rates in this manner.

ANSWER.—The members of the Committee are unanimously of opinion that competition of the kind referred to is most inadvisable, and that Banks should not help it on by accepting "cut" rates. The question is, however, one respecting which we could scarcely do more than express the views of the members of the Committee unofficially.

Cheque payable to order.—Right of drawee Bank to demand endorsement

QUESTION 469.—Section 8, clause 5, of the Bills of Exchange Act reads: "Where a bill is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option."

Does this mean that if a cheque is drawn, for instance, "Pay John Smith or order," John Smith can demand payment from the bank on whom drawn without endorsing the cheque or giving the bank a receipt, or what does it mean?

ANSWER.—If a cheque is worded "Pay to the order of John Smith," a literal interpretation of the drawer's instructions would exclude any right of John Smith personally to receive payment, as it is clearly an order to pay, not him, but his endorsee. The clause mentioned was passed to make the words quoted equivalent to "pay to John Smith or order."

The question of the right of a bank to demand the payee's endorsement has been fully discussed in the JOURNAL, and the view expressed that it has such a right. It may be urged that if a customer instructs the bank to pay a certain person, his instructions must be obeyed, and the bank must preserve such evidence of the payment as it can, that being the general rule with regard to all payments by debtors. But the bank, in our opinion, is entitled to rely on the universal practice of banks on this point as governing its relations with its customer, and to treat its contract with him as one under which it is bound to pay his cheques, provided it has funds, and provided also that the customary requirements as to endorsement are fulfilled.

It is to be remembered further that the customer is entitled, before he ratifies the payments made on his behalf, to have his order cheques endorsed by the payees, or to have satisfactory evidence that they have been so paid. (See the answer to Question 134).

Legal rate of Interest

QUESTION 470.—Has the legal rate of interest been reduced from 6 per cent. to 5 per cent. ?

ANSWER.—Yes. The legal rate of interest for liabilities incurred since the date of the passing of the Amending Act (7th July, 1900) is 5 per cent. See Statute of Can. 63-64 Vic., cap. 29.

Use of title "Savings Bank" by a Loan Company

QUESTION 471.—Is the use of the title 'Savings Bank' by a loan company an infringement of the Bank Act under Sec. 100?

ANSWER.—We think that the use of the title 'Savings Bank' by a loan company is an infringement of Sec. 100 of the Bank Act, unless the company has competent statutory authority for its use.

Stop payment of cheque—Cheque certified by drawee bank through oversight—Certification cancelled

QUESTION 472.—The bank on which a cheque, payment of which has been stopped, is drawn, receives it by mail from an outside point. Through oversight the cheque is marked and stamped paid. The error is discovered before three o'clock and the cheque sent to protest. The teller marks the cheque "Cancelled in error," but the ledger-keeper forgets to remove his initials. Do the initials of the ledger-keeper commit the bank to pay the cheque?

ANSWER.—We think not. As the bank did not as a matter

of fact honour the cheque, and as the initials were left on in error the holder could not claim any benefit from such an error.

*Orders drawn by firm of lumbermen on themselves,
payable on demand*

QUESTION 473.—Do orders drawn by a firm of lumbermen, or their agent at one of their depots, on themselves at their head office or on another depot, and payable to bearer on demand, come under Sec. 60 of the Bank Act?

ANSWER.—The sole question is whether or not the orders are designed to circulate as money. If they are they come under the section; if otherwise they do not. Whether they are intended for circulation and to take the place of money, would depend on the facts, which would have to be considered in connection with each case.

*Security lodged by promissor of a note—payment of note by an
endorser—Right of latter to acquire possession of the security
and to retransfer it*

QUESTION 474.—The bank holds for a certain note security from the promissor, which at the time it is hypothecated is declared to be pledged for the payment of all his present and future liabilities to the bank. The note is not paid by the promissor, but is taken up by the endorser. Subsequently the endorser borrows money from the bank on the security of the note. Can the bank legally hold it and the relative security, and can it deal with the latter on the terms covered by the letter of hypothecation?

ANSWER.—Our opinion is that the payment of the note to the bank by the endorser gives the latter the right to receive the note and security, and that (assuming that as between the promissor and himself the note still remains unpaid) he has the right to re-transfer the note and security to the bank as security for a loan he is getting.

The remedy given to the bank under the letter of hypothecation would continue in force according to its terms, and if wide enough to include the liability on this note there would be no legal objection to the bank proceeding under it.

*Cheques signed by attorney, the depositor's name being written
without the addition of the attorney's name*

QUESTION 475.—A. B. has given C. D. a Power of Attorney to sign cheques on his account, and in a letter to the bank asks

that the cheques may be honoured when signed by C. D., by writing A. B.'s name without adding anything thereto. Is it in order for the bank to honour cheques signed simply with the name A. B., such signature being placed on the cheque by C. D.?

ANSWER.—This is quite in order. The only question involved is one of proof, and doubtless the bank would be quite as able to prove the authenticity of the signature in that shape as in any other.

If similar instructions had been given with respect to endorsements it would be contrary to the "Rules and Conventions respecting Endorsements," which provide that the person signing in such a case must indicate his authority by words added to the signature. This rule, however, was adopted as a matter of policy, not as expressing a legal requirement.

Cheque in favor of Mrs. J. Smith endorsed "Mrs. J. Smith"

QUESTION 476.—Is the following form of endorsement (1) valid as a matter of law, and (2) regular according to the Clearing House conventions: Cheque drawn in favour of Mrs. J. Smith endorsed "Mrs. J. Smith."

ANSWER.—(1) The endorsement is valid as a matter of law. (See Question 406, page 289, volume VIII.)

(2) So far as the rules are concerned, we think they leave the matter an open question. Such an endorsement seems to us to comply with the second clause of Rule 2 inasmuch as the names correspond; but if it were so placed as not to show clearly that it is intended as an endorsement it would be an irregular endorsement requiring a guarantee under Rule 8.

Legal holidays—Right of a bank to accept or pay its customers cheques on a holiday

QUESTION 477.—(1) Has a bank any right to refuse or accept a cheque on a legal holiday?

(2) In Montreal English banks do business on Province of Quebec holidays:

(a) If a bank were to refuse a cheque on account of insufficient funds, on such a holiday, would the customer have a case for damages against the bank?

(b) If there were sufficient funds immediately after opening of business the next day?

ANSWER.—(1) With reference to holidays other than Sundays, we think a bank may accept a cheque if presented on a holiday, and if it has no funds we see no legal reason why it should not so state. It can of course decline, because of the holiday, to do

anything in the matter, and we think should, for its customers' protection, decline to give any answer unless it is prepared to honour the cheque.

(2) We think that it is quite legitimate for a bank to transact business on these holidays with any person who wishes to do so. We do not think the bank would be liable to a customer for anything that takes place on the holiday merely because it is a holiday.

Acceptances domiciled at a bank—Rights and duty of the bank

QUESTION 478.—Is a bank compelled to pay its customers' acceptances domiciled with it if there are funds, or is it merely authorized?

ANSWER.—Unless it has assumed some duty or obligation in the matter, a bank is not bound to pay its customer's acceptances even where it has funds, but it has authority to do so and charge them to his account. It has been alleged that in the Province of Quebec special authority is necessary, but we are not clear as to whether this is the case or not. It certainly is not throughout the rest of Canada.

Promissory note with a memorandum embodied therein, of the purpose for which it was given—Negotiability

QUESTION 479.—A promissory note bears (1) on one corner the words "To be used as collateral security."

(2) In the body the words "To cover 50 per cent. of my subscribed stock in the above company."

Do either of these affect the negotiability of the note?

ANSWER.—We think that this is a promissory note notwithstanding the inclusion of either or both these phrases.

Unregistered lien note in the North West Territories

QUESTION 480.—Is a lien note made in the North West Territories negotiable as a promissory note when not registered? *i. e.*, Can a holder for value sue a previous endorser in his own name? Does the omission to register deprive the payee of the note of his lien on the chattels?

ANSWER.—The ordinary lien note is not a promissory note within the meaning of the Bills of Exchange Act, and is not negotiable in the usual sense of the word; registration does not affect the matter one way or the other. The person who acquires such a note has therefore no remedy against the endorsers such as the Act provides in regard to Bills of Exchange.

The non-registration of the note does not, as we understand the matter, deprive the payee of his lien, but it leaves the goods open to be claimed by a subsequent mortgagee or purchaser. This would however depend upon the wording of the statute requiring registration.

Protest—Hour for

QUESTION 481.—A cheque is presented for payment by another bank at 10 o'clock, and payment is refused. Could their Notary present and protest immediately thereafter?

ANSWER.—The Notary may present the cheque immediately, but he cannot protest it until after three o'clock in the afternoon (Section 51, 6b). The effect of this is that presentment at ten o'clock, if the cheque is dishonored, is the only presentment that need be made; the Notary may hold the cheque in his hands until three o'clock and then make the protest, without again presenting it.

Sterling Bill drawn on a Canadian Bank—Rate of Exchange

QUESTION 482.—The customer of a Winnipeg bank draws at London, England, a cheque on them for £1,000 sterling. What rate of exchange is the holder entitled to receive?

ANSWER.—If the cheque contains no stipulation as to the rate of exchange, the holder is entitled to receive payment at the current rate at Winnipeg for sight drafts. See section 70 (d), Bills of Exchange Act.

Security on Standing Timber

QUESTION 483.—In what form should security on standing timber and timber licenses be taken under chapter 26, 1900, section 16?

This section has been placed in the copy of the "Bank Act and Amendments" issued by the JOURNAL under section 74, but there does not appear to be any authority for treating it as part of that section.

ANSWER.—In publishing the "Bank Act and Amendments" the new matter was placed as nearly as possible in its natural position throughout the Act. This is the only reason why section 16 of the Amending Act of 1900 appears between sections 74 and 75. It is not, however, intended as an addition to section 74.

As regards the form of the security, it may be assumed that whatever is necessary under the Provincial law should be followed. In the case of timber licenses a transfer of the usual kind

recorded in the Crown timber office would be necessary. In the case of timber standing on land owned by the customer the same procedure should be followed as would be adopted if a private person were taking security on the timber.

Joint Stock Company—Transfer of shares without directors' consent

QUESTION 484.—The by-laws of a joint stock company forbid the transfer of stock by shareholders without the consent of the directors. Would a transfer of paid-up stock be valid if made in the absence of such consent, or in case of its refusal?

Would your answer also apply in the case of stock not fully paid up?

ANSWER.—In the case of stock on which there is a liability we think that under such a by-law the directors might refuse to permit the transfer; but they cannot act capriciously: they must accept a transferee who is in good financial standing, and can refuse only on substantial grounds.

If the stock is fully paid up, and no further liability exists, the directors would not, we think, be able to prevent the transfer, notwithstanding the by-law, unless under very special circumstances.

The law on these points is fully discussed in *Smith v. Bank of Nova Scotia*, in which the right of a shareholder in a bank to transfer partially paid stock to a solvent transferee without the consent of the directors is involved.

Cheque payable to "cash or order"

QUESTION 485.—Does a cheque payable to "cash or order" require the endorsement of the drawer?

ANSWER.—No. If "cash" means literally "cash" and is not the name of a person, the cheque should be treated as payable to bearer. (See section 7, sub-section 3, Bills of Exchange Act.)

Presentment for payment—Reasonable time

QUESTION 486.—An acceptance held by Bank A is payable at Bank B. Being unpaid at close of business on the date of maturity Bank A hands the bill to a notary for protest. The notary delays presentation until 4.30 p.m. and finds the officers of Bank B have left for the day, the payee having in the meantime provided for the payment of the bill. Can the notary protest the bill; or, if he merely "notes" it, can he collect the usual notarial fee? What would be the proper course for the Banks to take under such circumstances?

ANSWER.—This question raises some important points, regarding which we have thought it well to get a memorandum from the counsel of the Association, which is printed at the end of the Questions.

The effect of the view which Mr. Lash takes in the case put by our correspondent is as follows :

The Notary under the circumstances mentioned could not be said to have made a presentation at all, and the protest must therefore be made on the strength of the presentation which we assume was made earlier in the day by Bank A. at Bank B. It is not necessary that the presentation should be made by the Notary, although it is clearly an advantage that he should make it, as that simplifies the proof in case of dispute afterwards. Of course, if a Notary presents a bill after banking hours and finds someone who is authorized to pay or refuse payment such a presentation is valid notwithstanding the hour.

As regards noting, if the Notary notes the bill instead of protesting it, he is entitled to whatever is the usual fee for noting and sending out the notices of dishonour, but we do not see that this has any bearing on the question as to the effect of the delay in presentation.

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TIME WITHIN WHICH PRESENTATION FOR PAYMENT MUST BE MADE

The question as to the time during the day of maturity when a bill must be presented for payment does not appear to have come up for decision in Ontario.

The cases in England on the subject are all old ones. The section of the English Bills of Exchange Act now sets the question at rest there, as it declares that presentment must be made "at a reasonable hour on a business day" at a proper place, etc. The corresponding section of the Canadian Bills of Exchange Act is as follows :

"45. (a) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(c) Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place, as herein-after defined, either to the person designated by the bill as payer, or to his representative or some person authorized to pay or refuse payment on his behalf, if, with the exercise of reasonable diligence, such person can there be found."

The section relating to the presentment for acceptance is as follows :

"41. (a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse

acceptance, on his behalf, at a reasonable hour on a business day, and before the bill is overdue."

It will be observed that this section contains the words "*at a reasonable hour on a business day.*" The absence of these words in Section 45, and the statement in that Section that presentment for payment must be made on the day the bill falls due leaves the question open for argument—the argument being that as nothing is said as to the time of the day for presentation for payment, the holder has the whole day for presentment.

We think, however, that inasmuch as section 45 requires presentment to be made at the proper place either to the person designated by the bill as payer, or some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person could there be found, presentment for payment must be made at a reasonable hour, otherwise it could not be said that reasonable diligence had been exercised to find the proper person at the proper place to whom the bill could be presented.

In *Parker v. Gordon*, 7 East, 385 (A.D.) 1806, Lord Ellenborough said :

"If a party choose to take an acceptance payable at an appointed place, it is to be presumed that he will inform himself of the proper time for receiving payment at such place and he must apply accordingly."

In this case the bill was made payable at a banker's, and it was not presented until after six o'clock, p.m., when the bank was shut and the clerks gone away.

In the same case *Le Blanc*, 7, said :

"If a party will take an acceptance in this manner, payable at a Banker's, he must present it at a proper time, according to the known method of conducting business, otherwise the greatest inconvenience would ensue."

A New York case, *Utica v. Smith*, 18 Johns, N.Y., 230, is instructive. In that case a note was payable at the Mechanics' Bank, New York City, and was presented at 3.15 p.m. The bank closed at three o'clock, but it was customary for clerks to remain after that hour during which notes were presented and paid or refused. The court said, "though the presentment was out of banking hours, it is sufficient if there was a person at the bank authorized to give the holder an answer."

The result of a number of American cases is given in the *American and English Encyclopædia of Laws, 2nd Edition, Vol. IV., page 370*, as follows:

“Where a bill or note is payable at a bank, it must be presented for payment before the usual hour of closing the banking house.”

We think these authorities would be followed in Canada.

Section 8 of chapter 17 of the Acts of 1891, amending the Act of 1890 declares that the rules of the common law of England, including the Law Merchant, save in so far as they are inconsistent with the express provisions of the said Act, as amended, shall apply.

The English cases referred to show what the rule of the common law of England on the subject was, and we think it cannot be said that such rule is inconsistent with the express provisions of the Act. On the contrary, we think it consistent with it.

Legal

LEGAL DECISIONS AFFECTING BANKERS

KING'S BENCH DIVISION, ENGLAND

Stevenson v. Brown*

Across the face of a promissory note the maker wrote and signed the following:—"Payable at the London and Provincial Bank, Walthamstow." Held, that the promissory note was not "in the body of it" made payable at a particular place within s. 87, sub-s. 1, of the Bills of Exchange Act, 1882.

In this case the plaintiff, Mr. H. G. E. Stevenson, sued the defendant, Mrs. M. E. Brown, to recover £100, the amount of a promissory note made by Mr. George Childs, and dated November 18, 1901, the payment of which had been guaranteed by the defendant. The defendant denied liability.

It appeared that a writ had also been issued against Mr. Childs, but he was unable to be found. The facts were as follows:—In November last year, Mr. Childs was desirous of borrowing £300 for the purpose of erecting some buildings on a piece of land which was to be leased to him by Mrs. Brown. The latter was unable to make the advance in question herself, and eventually it was arranged that the plaintiff should advance the money upon three promissory notes of Mr. Childs' for £100 each, payable respectively, one, two, and three months after date. As a security for the repayment of the money Mrs. Brown signed a guarantee in the following form:—"If you will discount Mr. G. Childs' three promissory notes for £100 each I will, in consideration of your so doing, in the event of all or either of the said promissory notes being dishonoured at maturity, pay you the amount of such dishonoured note or notes, as the case may be." The promissory notes, with the exception of the date at which they became payable, were in the following form: "One month after date I promise to pay to Mr. H. G. E. Stevenson or order the sum of £100 value received.—GEORGE CHILDS," and across the note was written "payable at the London and Provincial Bank, Walthamstow.—GEORGE CHILDS." The first promissory note became payable on December 21, and was taken by the

**The Times Law Reports*, Vol. xviii., No. 11.

clerk to the plaintiff's solicitors at Walthamstow, for presentment at the bank. It turned out that there were three branches of the London and Provincial Bank at Walthamstow, and on applying to the first for payment the clerk was told that Mr. Childs did not bank there. He then went to the second branch, where they took the note, and pointed out that it required the plaintiff's endorsement. This the clerk obtained, and as, being Saturday, it would have been too late to return to the bank and present the note again, he went to Mr. Childs' residence at Chingford for the purpose of trying to collect the money due on the note. He was told that Mr. Childs was away, and that it was not known when he would return. Mr. Childs had never been found, and the defendant was accordingly sued on her guarantee. The substantial defence was that the promissory note had not been presented or dishonoured, and that accordingly she was not liable.

MR. JUSTICE DARLING, in giving judgment, after referring to the facts, said the plaintiff contended that the note was dishonoured at maturity, while for the defendant it was said that this was not the case, because it ought to have been presented at a particular place, and had not been so presented. The law was laid down in the 87th section of the Bills of Exchange Act, 1882, and the effect of that section was that the note should have been presented at the London and Provincial Bank, Walthamstow, if it had been made payable there in the body of the note. Whether it had so been made payable at that particular place was the question he had to decide. It had been held that, if the words "payable at the London and Provincial Bank, Walthamstow," had been written in the corner of the note, then that would not have been part of the note—the expression "body of the note" was not used in the old cases. The statute now said that, if the direction as to where the note was to be paid was in the body of the note, it must be presented at that place to render the maker liable. Seeing that, in accordance with the old cases and the statute, if the words in question were written in a corner of the note they would be merely a memorandum, and that a memorandum was not part of the contract or part of the body of the note, the question was whether it made any difference that they were not written in a corner of the note but written across it. That was what he had to decide. The note would have been a perfectly good one without the words written across it, and he did not think that the fact that Childs had written something across it and signed it strengthened the idea that the words were in the body of the note, because it was not a usual thing to put two signatures in the body of a document. The conclusion to which he came was that

the words written across the note were not in the body of the note, and, that being so, section 87 of the Act of 1882 expressly said that presentment was not necessary at a particular place unless that particular place was mentioned in the body of the note. Another contention had been raised by the defendant with which it was necessary to deal. It was said that by sub-section 3 of section 87 Mrs. Brown was entitled to be considered an endorser. Even if she were an endorser the sub-section would not apply to her, because the particular place was not mentioned in the body of the note. He did not think, however, that she could be considered an endorser, because the statute related to what was on the note itself, and not to anything in a separate document. Mrs. Brown was not an endorser of the note, but had given a guarantee upon which she was sued. The cases which had been cited only touched the matter in so far as they helped to decide whether the added words were a part of the contract or only a memorandum. If he had to decide that he should say, on the authority of *Williams v. Waring* and *Exon v. Russell*, that they were only a memorandum, and as he was further of opinion that upon the express words of the statute they were not part of the body of the note, and therefore it was not necessary to take it to Walthamstow for presentment, he held that Mrs. Brown was liable on her guarantee, and there would be judgment for the plaintiff for £100.

In view of an appeal a stay of execution was granted on terms.

KING'S BENCH DIVISION, ENGLAND

Herdman v. Wheeler*

The defendant signed a blank stamped form of promissory note and handed it to a person named Anderson, with authority to fill it in for £15 and to make it payable to himself, so as to enable the latter to borrow £15 for the defendant. The blank form was stamped sufficient to cover a note for £75. Anderson filled in the name of the plaintiff as payee and the amount as £30, and handed it to the plaintiff, who in good faith and without notice of the fraud gave him a cheque for £25, payable to the order of the defendant. Anderson then forged the defendant's endorsement on the cheque and received payment thereof. In an action on the promissory note, *Held*, that the plaintiff could not recover on the note, as it had not been "negotiated" to him within the meaning of the proviso to s. 20 of the Bills of Exchange Act, 1882, the plaintiff being the payee of the note. The word "negotiated" means transferred by one holder to another.

This was an appeal from the Newcastle County Court raising an important question under the Bills of Exchange Act, 1882. The facts of the case and the arguments of counsel appear fully in the judgment.

**The Times Law Reports*, Vol. xviii., No. 9.

MR. JUSTICE CHANNEL, in delivering the considered judgment of the court, said :—This is an appeal from a judgment of the Judge of the Newcastle County Court given for the defendant in an action by the payee against the maker of a promissory note for £30, and the principal point involved is the construction of the 20th section of the Bills of Exchange Act, 1882. The facts are not in dispute. The conduct of each of the parties in the action appears to have been quite straightforward and honest, and the evidence of each of them has been accepted as true. The difficulties which arose were occasioned by the fraud of one Anderson, who is now dead. The facts are as follows :—Mr. Wheeler, the defendant, was a curate at Sunderland, and being about to remove to Norfolk, he required a temporary loan of £15 to pay the expenses of removing. He applied to Anderson to lend him the money, and Anderson promised to do so. The defendant, however, seems to have understood that Anderson proposed to get the money from some one else, and the name of the plaintiff Herdman was mentioned as a person who would lend it, but the defendant objected to borrowing the money himself direct from the plaintiff. The defendant gave to Anderson a promissory note payable to Anderson for £15, and expected to get the money from Anderson the next day. We think he must have expected that Anderson would have borrowed the money, and probably from the plaintiff. If he knew anything of business he must have understood that his promissory note would be endorsed by Anderson to the lender of the money. On the next day Anderson saw him, and did not give him the money, but informed him that the promissory note was in some way wrongly made out, and gave it back to him and it was burnt. In lieu of it the defendant gave to Anderson his signature on paper stamped with a 9d. stamp, which would be sufficient for a note for £75. This was done in a restaurant when the defendant was in a hurry, and he trusted Anderson to fill it up, but only authorized him to do so as a promissory note payable to himself and for £15 only. Anderson promised to send the £15. He did subsequently send a cheque of his own for £15, which, however, was dishonoured. Anderson having got the defendant's signature and the note in blank, communicated by telephone with the plaintiff and asked him if he was willing to lend the defendant £25 upon his promissory note for £30 at a month. He represented that the defendant was in urgent need of the money and was willing to pay the £5 for the accommodation, but he further stipulated that if the money was repaid in a week £2 only should be charged instead of £5. The plaintiff agreed to the proposal, and it was arranged that Anderson should bring or send the note and receive the money. The plaintiff, having to go out, wrote a cheque for the £25 payable to the order of the defendant and left it with his

wife to be exchanged for the promissory note. Anderson then sent the promissory note by a clerk, and received the cheque from the plaintiff's wife. The note, when received by the plaintiff's wife, was filled up as a promissory note for £30, with the plaintiff's name inserted as payee. It was on the face of it complete and regular in all respects, and the plaintiff had no notice that it had been signed in blank, or that Anderson had in any way acted without authority. The plaintiff's cheque for £25 was presented at the bank on which it was drawn, with an endorsement purporting to be the defendant's, but which was not his, and the endorsement appears to have been forged by Anderson. The defendant appears to have got cash from some one for Anderson's cheque for £15, but when it was dishonoured he had to take it up. In the result, therefore, he got no part of the proceeds of the promissory note. When the week elapsed the plaintiff wrote to the defendant on the matter, and then some correspondence took place, in which the plaintiff and defendant each stated the facts as far as they knew them. The defendant, upon receiving the plaintiff's letter, had some communication with Anderson, who promised to settle the matter, and gave him a receipt purporting to be a discharge of his liability, but Anderson did not settle with the plaintiff, and died within a few days and before the note became due. The Judge on these facts gave judgment for the defendant. The liability of the defendant appears to depend upon whether the case comes within the proviso at the end of the 20th section of the Bills of Exchange Act—that is, whether in this case the note was within the meaning of the words as used in that section:—"After completion negotiated to a holder in due course." On the part of the defendant it was not denied in argument before us that the plaintiff was a holder in due course, but it was said that the note was not negotiated to him, and that, if it was, it was not negotiated after completion. Since the argument we have been referred by counsel for the defendant to the case of *Lewis v. Clay* as an authority that the plaintiff was not in that case a holder in due course. On the argument it was further said that section 84 shows that the note was incomplete until the delivery to the plaintiff, and consequently, if it could be said to be "negotiated" to him at all, it was not "after completion," but either before or, at most, simultaneously with completion; but it was further said, and this we think is the substantial argument for the defendant, that it was never negotiated to the plaintiff, as he was the payee, and an original party to the contract contained in the note, and did not become a party by transfer. It is contended that a bill or note is only "negotiated" when it is transferred from one holder to another, and for this section 31 is referred to. In substance the argument for the defendant and the judgment of the County Court Judge in his favour come to

this—that the proviso in section 20 can have no application as between the immediate parties to a note or bill. If this is the necessary meaning of the words used in the proviso, we must, of course, give effect to it and affirm the judgment for the defendant, for the Bills of Exchange Act is now the code of law on the subject, and in cases where it differs from the old law it prevails over the old law. But if the words used in the Act are fairly capable of being construed as meaning the same as the words used by Judges previously to the Act in stating the law, it would be right to give them that meaning, in the absence of anything to indicate a clear intention of the Legislature to alter the previous law. Further, by section 97, sub-section 2, the rules of the law merchant are to continue to apply to bills and notes, except so far as they are inconsistent with the provisions of the Act. It is, therefore, material to see what light the law on this subject before the Act throws on the case before us. We find Lord Justice Bowen stating the law thus in *Gerrard v. Lewis*: “I arrive at the conclusion that a man who gives his acceptance in blank holds out the person to whom it is entrusted as clothed with ostensible authority to fill in the bill as he pleases within the limits of the stamp, and that no alteration (even if it be fraudulent and unauthorized) of the marginal figure vitiates the bill as a bill for the full amount inserted in the body when the bill reaches the hands of a holder who is unaware that the marginal index has been improperly altered.” Of course a case like the present, where there was no marginal figure, but only verbal instruction to fill in £15 as the amount, is an *a fortiori* case. It will be observed that the words “when the bill reaches the hands of a holder” are wide enough to cover the case of the payee, unless it could be contended that a payee was not a holder. Again, Lord Selborne, in *France v. Clarke* expresses the rule thus: “The person who has signed a negotiable instrument in blank or with blank space is (on account of the negotiable character of that instrument) estopped by the law merchant from disputing any alteration made in the document after it has left his hands by filling up blanks (or otherwise in a way not *ex facie* fraudulent) as against a *bona fide* holder for value without notice, but it has repeatedly been explained that this estoppel is in favour only of such a *bona fide* holder.” This statement would appear to include the case where the name of the person who became *bona fide* holder had been inserted as payee. The reported cases in which a holder who had given value for a bill after it had become complete and regular on the face of it has been held entitled to recover, notwithstanding that the bill had been signed by the defendant in blank and had been filled up otherwise than in accordance with the defendant’s authority, will, we believe, be found to be all cases where the holder was endorsee

and not payee; but it is obvious that cases such as the present, where the payee's name was inserted without his knowing of the bill having been in blank, would be rare. The language of the judges seems wide enough to cover the case of the payee as well as the case actually before them, but that is all that can be said. There are cases where the payee's name has been inserted by himself and where he has been entitled to recover, as *Crutchly v. Mann*, *Harvey v. Cane* and *Scard v. Jackson*, but in these it seems there had been nothing done in excess of the defendant's authority except the mere putting of the payee's name. In *Harvey v. Cane* it was said that anybody who gets the bill (*i.e.*, one with the payee's name omitted) fairly is *prima facie* entitled to insert his own name as payee, and if this wide statement is correct, it would seem that a payee stands in as good a position as an endorsee when he *bona fide* gives value for the bill; but in *Harvey v. Cane* the Court also seems to have come to the conclusion that what was done came substantially within the defendant's authority. The cases of *Awde v. Dixon* and *Scholfield v. Lord Londesborough*, cited by the defendant on the argument, do not appear to help him very much; but, on the other hand, the investigation of the law before the Bills of Exchange Act appears to show that there is no case which would be a distinct authority in favour of the plaintiff if the law were still as before the Act. We therefore approach the consideration of the words used in the Act without any very clear guide from the previous state of the law, but we do rather expect to find the *bona fide* holder for value without notice, or the holder in due course, as he is now called, fully protected. Passing now to the words of section 20 of the Act, the first sub-section of that section shows that Anderson has a *prima facie* authority to fill up this note, but that in this case is hardly important. The second sub-section shows that, unless the case comes within the proviso at the end, the note is not enforceable against the defendant, because it was not filled up strictly in accordance with the authority given. If in the present case Anderson, instead of communicating through the telephone with the plaintiff, had brought the stamped paper signed by the defendant with him, and had filled it up in the plaintiff's presence, the plaintiff would certainly have been put on enquiry as to Anderson's authority, and by reason of the first part of the second sub-section could only have recovered if Anderson was acting strictly within his authority. So in all cases where the plaintiff has been allowed to recover on a bill in which he had inserted his own name as payee he would, I think, now have to show that this was within the authority given by the defendant. Then comes the important proviso, "Provided that if any such instrument" (that is an instrument which has either a simple signature on stamped paper or a bill wanting in any

material particular) "after completion is negotiated." Now, it seems to us that completion here refers to completing the form of the bill or supplying the wanting "material particular." It is after it has been made complete and regular on the face of it, to take the words of section 29 defining holder in due course. We do not think "completion" as used in this proviso includes delivery. It is the form of the instrument which is being referred to, and not its ceasing to be inchoate and revocable and becoming an operative instrument which is the matter referred to in the 84th section. But, even if the bill could not be said to be completed unless delivered to some one, here it was delivered to the plaintiff, and, if what happened on his giving his cheque for it and becoming the holder for value is "negotiating it to a holder in due course," it may, I think, be said to be "negotiated after completion." The real question is, does "negotiated to a holder in due course" cover what was done in this case? The plaintiff undoubtedly became the holder of the bill for value when it was handed to his wife and she gave over his cheque in exchange. This brings us to the important words, "negotiated to a holder in due course," and it is necessary to consider the case of *Lewis v. Clay*. In that case the late Lord Chief Justice said in an action brought by the payee of a promissory note, "Further, an examination of sections 20, 21, 29, 30, and 38, relating expressly to bills, and sections 83, 84, 88, and 89, relating to promissory notes, will make it quite clear that a holder in due course is a person to whom after its completion by and as between the immediate parties the bill or note has been negotiated. In the present case the plaintiff is named as payee on the face of the promissory note, and therefore is one of the immediate parties. The promissory notes have, in fact, never been negotiated within the meaning of the Act. I desire to say here that, even if the plaintiff were 'holder in due course,' it would, in my judgment, make no difference in the result." The Chief Justice thus gave his judgment really on the same ground as *Foster v. Mackinnon*. It is quite clear, therefore, that the expression of opinion of the late Chief Justice that a payee was never a holder in due course was a *dictum* only. In section 29 it is necessary to read holder as including payee as well as endorsee, and to read it, "a holder in due course is a payee or endorsee," &c. That being so, the only words in section 29 which can be said to indicate that a payee cannot be a holder in due course are those in sub-section 1 (b), "and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it." But, if the word "payee" had been expressed in the earlier part of the section, it would be clear that this means, "if negotiated to him he had at the time no notice," &c. On the whole, therefore, we are not prepared to hold that a payee of a note can

never be a holder in due course, but it is, as it seems to us, just as unnecessary for us to decide that question as it was for the late Lord Chief Justice in the case before him. The real point in the present case, after all, is, can we hold that this note was "negotiated" to the plaintiff within the meaning with which the words are used in the proviso to the 20th section, and as to this we certainly have the opinion of the late Lord Chief Justice that a delivery to a payee for value is not a "negotiating" within the meaning of the Act. In the 31st section it is said, "a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill." Does this mean only from one person who is holder to another, or may the person transferring be an agent in possession of the bill otherwise than a holder, whose delivery constitutes the receiver or holder? And even if that cannot be the meaning in the 31st section, may it not be possible to say that on the 20th section "negotiated to a holder in due course" means no more than delivered to a person in such a way that he thereupon becomes a holder in due course? This is the argument of Mr. Arthur Powell for the plaintiff. On the other hand we have to deal with the points raised by Mr. Bruce Williamson in his argument for the defendant, that the issuing of a bill or note to the first holder stands on a different footing altogether from the transfer of it from one holder to another, because when the first takes it it has not become part of the mercantile currency of the country, to use an expression found in some of the cases. Even if the payee of a note may be a holder in due course, the question whether he is so or not depends upon the actual state of facts as between him and the maker of the note; and the contract between the payee and the maker of the note, though it has some incidents written into it by the law merchant, yet is governed more by the ordinary law of contracts than by the law merchant, and in particular that the element of negotiability in no way enters into the contract between the maker and the payee. There is much to support this argument in the Bills of Exchange Act. In the present case the delivery of the note to the plaintiff must, in order to enable him to recover, be under the authority of the defendant. It certainly was not so delivered by the defendant's actual authority, and can only be said to have been delivered under his authority by reason of the ostensible authority with which Anderson had been clothed by the signature in blank. Mere possession of a promissory note, complete and regular on the face of it and payable to a named payee, would not be conclusive evidence that the maker had given authority to the person in whose possession it was to deliver it to the maker. Anderson, if agent of the defendant at all, was only agent to fill up the paper, and if the question were to be determined altogether apart

from the law merchant and the Bills of Exchange Act, we should have to say that there was here no binding contract at common law, whereby the defendant promised the plaintiff that if the plaintiff would give £25 to Anderson for the defendant the defendant would pay £30 to the plaintiff in a month. We have been very reluctant to come to the conclusion that the judgment in favour of the defendant in this case was right, but after carefully considering the matter we have come to the conclusion that we should be unfairly straining the words if we did not hold that "negotiated" in the proviso at the end of section 20 means transferred by one holder to another. We think the present case might possibly have been decided in the plaintiff's favour before the Act was passed. We think that the appeal must be dismissed.

HIGH COURT OF JUSTICE OF ONTARIO *

Hall v. Hatch

The Bank of Montreal v. Hatch et al

A superannuated civil servant having presented his certificate at the wicket of a bank which paid superannuation allowances for the Government, the teller counted out the amount in notes and placed them on the ledge in front of the wicket, when, before the payee had touched it, the money was seized by a sheriff's bailiff under an execution against him :—

Held, that the property in the money had passed to the payee as soon as it had been placed upon the ledge, and that the execution creditor was entitled to it.

Judgment of the local Master at Ottawa affirmed.

This was an appeal from a judgment of the local Master at Ottawa in an interpleader issue between the Bank of Montreal as claimant, against one Walter Hatch, as execution creditor, and the sheriff of the county of Carleton, directed in an action in the High Court of *Hall v. Hatch*, the defendant Hatch having recovered a judgment and issued execution against the plaintiff Hall.

The issue was directed at the instance of the sheriff, to try the right to a certain fund in his hands, which was claimed by the Bank of Montreal as well as by the execution creditor, the defendant Hatch. The plaintiff Hall claimed the same money from the bank, or alternatively, for the return of his pension certificate or cheque; and, by the consent of all parties, the bank's claim to the money so seized and also Hall's claim over

**Ontario Law Reports*. Vol. iii., p. 147. Reported by Geo. A. Boomer.

against the bank were disposed of summarily by the Master at Ottawa under Con. Rules 1110 and 1111.

The matter was argued before Mr. W. L. Scott, the local Master at Ottawa, on the 27th of June, 1901.

The local Master gave the following judgment:—

THE LOCAL MASTER.—This is an interpleader application made on behalf of the sheriff of the county of Carleton. The facts are not in dispute, and are as follows:—

The plaintiff Hall is a superannuated civil servant entitled to receive the sum of sixty-three dollars per month from the Receiver-General of Canada through the Bank of Montreal.

On the 27th of May, 1901, he went to the Ottawa office of the bank and there presented to the paying teller the usual superannuation declaration for the purpose of drawing his allowance for the month of May.

The teller took up the declaration, counted out the sum of sixty-three dollars in notes and placed them upon the ledge in the wicket which communicates between the teller's box and the outer office of the bank, in front of Hall, for him to take up. After the teller had removed his hand from the notes, and while they were still lying upon the ledge, and before they had been in any way touched or handled by Hall, they were seized by a sheriff's bailiff, under an execution issued at the suit of the execution creditor Hatch.

Hall, through his solicitors, subsequently demanded payment of the sixty-three dollars from the bank, and the latter thereupon made a claim on the money in the sheriff's hands.

When the matter came before me the sheriff's right to interplead was not disputed, and all parties were agreed that instead of directing an issue, I should dispose summarily of the matters in dispute, under the provisions of Rules 1110 and 1111. The plaintiff Hall also consented to come in and, in order to save expense, he and the bank agreed that their rights *inter se* should be determined here, without further litigation.

At common law the sheriff had no authority to seize money. This right was first conferred in England by 1 & 2 Vict. ch. 110, sec. 12, and in Canada by the old Common Law Procedure Act of 1856, 20 Vict. ch. 57, sec. 22. The legislation at present, governing the matter is sec. 18 of the Execution Act, R.S.O. 1897, ch. 77, which reads: "The sheriff or other officer having the execution of a writ against goods . . . shall seize any money or bank notes . . . belonging to the person against whose effects the writ of execution has issued," etc.

The question on the answer to which the decision of this case depends, therefore, is, had the property in the notes passed to Hall at the moment when the sheriff's bailiff seized them?

If they were at that moment "belonging" to Hall they were liable to seizure, but not otherwise.

Among the numerous cases cited on the argument, the one which throws most light on that question is *Chambers v. Miller* (1862), 13 C.B.N.S. 125, also reported 32 L.J.C.P.N.S. 30. The facts of the case were as follows: The plaintiff presented a cheque at the defendant's banking-house. The defendants' cashier counted out the amount in notes, gold, and silver, and placed it on the counter and went away. The plaintiff drew the money towards him, counted it over, and was in the act of counting it a second time, when the cashier (who had in the meantime ascertained on enquiry that the account of the drawer was overdrawn) returned and said that the cheque could not be paid. The plaintiff, however, having possession of the money, put it into his pocket, whereupon the cashier detained him until he returned the money, under a threat of giving him into custody on a charge of stealing it. Upon these facts it was held that the property in the notes had passed from the bankers to the bearer of the cheque, and that the payment was complete and could not be revoked. I shall quote some passages from the judgments, which I think will afford assistance in dealing with the present case.

Erle, C. J., says, at pp. 132, 133: "When a cheque is presented at the counter of a banker, the banker has authority on the part of his customer to pay the amount therein specified on his account. The money in the banker's hands is his own money. On presentment of the cheque, it is for the banker to consider whether the state of the account between him and his customer will justify him in passing the property in the money to the holder of the cheque. In this case, the banker's clerk had gone through that process, and so far as in him lay did that which would pass the property in the money to the plaintiff. He counted out the notes and gold and placed them on the counter for the plaintiff to take up. It no longer remained a matter of choice or discretion with him whether he would pay the cheque or not. The plaintiff had taken possession of the money, counted it once, and was in the act of counting it again, when the clerk, who had gone from the counter, . . . returned and claimed . . . to have the money back. Now, the bankers had parted with the money, and the plaintiff had accepted it. It is true he had not finished counting it, and that, if he had found a note too much or a note short, there was still time to rectify the mistake. But, according to the intention of the parties, and the course of business, the money had ceased to be the money of the bankers, and had become that of the party presenting the cheque. . . . The banker's clerk chose to pay the cheque; and the moment the person presenting the cheque put his hand upon the money, it became irrevocably his."

Williams, J., says at pp. 134, 135: "I see no ground whatever for saying that the transaction was incomplete. There was no evidence that anything further remained to be done to complete it. The act of counting was no indication on the part of the plaintiff that he had not accepted the money. The argument was founded upon a mistaken view of the mode in which the question arises. Where money is paid, not in performance of a promise, at the precise day on which it ought to have been paid, but in satisfaction of a breach of promise, there must be not only payment, but acceptance in satisfaction. That, however, is not so where the payment is made in performance of an agreement on the precise day, or where the creation of the right to receive the money and the act of payment are simultaneous. In these cases, where the money finds its way into the hands of the person to whom the payment is to be made, the transaction is complete."

Byles, J., says, at p. 136: "I must confess that I should be inclined to hold, as a matter of law, that so soon as the money was laid upon the counter for the holder of the cheque to take, it became the money of the latter."

Keating, J., says, at p. 137: "The cashier counted out the money, and placed it on the counter for the purpose and with the clear intention of putting it under the control of the person who presented the cheque. This was no conditional payment—as if the cashier had said to the party, 'I hand you this money in payment of the cheque, on condition of your counting it, and assenting to its correctness.' Suppose the plaintiff had been content to take up the money without stopping to count it, could anybody doubt that the property would have passed? It does not the less pass because the recipient chooses to count it before he puts it in his pocket."

Before applying the principles here enunciated, to the present case, I shall examine some of the other authorities cited on the argument. In Byles on Bills, 15th ed., p. 305, the law is stated to be as follows:—"Money laid down on the counter by a banker's cashier in payment of a cheque cannot be recovered back by action, though it were handed over under a misapprehension of the state of the drawer's account. . . . A banker's counter is in the nature of a neutral table, provided for the use of both banker and customer. As soon as the property is laid down by the banker upon the counter to be taken up by the receiver, the payment is complete." The cases cited in support of this are *Chambers v. Miller*, and a case of *Pollard v. The Bank of England*. In the latter case the circumstances were so different that it throws little, if any, light on the present case.

In Morse on Banks and Banking, 3rd ed., sec. 449, the principle is thus stated: "From the moment that the act of

transfer is completed, and the minds of the parties have met and agreed upon the thing transferred as constituting a payment, instantly the right to repudiate or annul the transaction ceases. If the bank discovers at once that the drawer's account was overdrawn before the cheque was paid, it cannot recall the funds from the possession of the holder, not even if he be still at the counter, provided the act of transfer had been perfected by the intent and act of both parties, leaving nothing further to be done."

The American case of *Root v. Ross* decides that the fact that there is a dispute about the amount of money handed over does not make the transaction any less a complete payment. In that case the defendant's agent handed a roll of bills to the plaintiff's attorney stating that it contained sixty-three dollars. The latter counted it and found only sixty-two. It was then handed to a third party to count, who, being a sheriff, seized the money under an execution against the plaintiff. It was held to be a complete payment notwithstanding the dispute as to the amount.

In *Thompson v. Kellogg*, the head-note reads: "In order to constitute a transaction a payment, there must be both a delivery by the holder and an acceptance by the creditor, with the purpose on the former to part with, and of the latter to accept of, the immediate ownership of the thing passed from one to the other." It was a suit by the plaintiff against his attorney to recover the amount of a bill on the ground that the acceptor, one De Baun, had paid the money to the attorney. The bill was presented at maturity by the defendant to De Baun, who, when payment was demanded, uncovered a large quantity of dimes and half dimes lying on a table and told the defendant that there was the money for him. Defendant went up to the table, put his hand on the money, and in running his hand over it mixed it somewhat, and said, "I suppose I shall have to take it, and I will go to my office to get bags for it": p. 282. Defendant then went out and returned in three or four minutes. During this interval, a levy had been made upon the money as the property of De Baun under a judgment against him. Defendant again demanded payment of the bill. De Baun told the defendant that there was the money; that he had once paid it to the defendant. Defendant replied, "I won't receive it; it is in the hands of the sheriff." It was left to the jury to say whether or not the money had been paid to the defendant, under certain instructions from the Court which, in so far as they have any bearing on the present case, were as follows: "1. If the jury believe from the evidence that . . . De Baun offered to the defendant the amount, . . . and the defendant received the same in immediate satisfaction of the draft; . . . the jury should find for the plaintiff. 2. If the amount of the draft was tendered to the defendant by De

Baun, as aforesaid, and the same was not received by the defendant in immediate satisfaction of the draft; or if anything remained to be done by the defendant, such as counting the money before the defendant would receive the same in satisfaction of the draft, then the jury should find for the defendant. 3. A tender of the money to the defendant was not payment unless he received the same in immediate satisfaction of the draft; . . .” The jury found in favour of the defendant, and an appeal from the finding was dismissed.

In delivering the judgment of the Court, Leonard, J., said: “In order to constitute the transaction a payment, there must be both a delivery by the debtor and an acceptance by the creditor, with the purpose on the part of the former to part from, and of the latter to accept of, the immediate ownership of the thing passed from the one to the other. . . . Admitting that the money was within the physical control of the creditor, the question yet remained whether it was there with intent on his part to keep it as owner, which was necessary in order to make it presently his property; or, in the words of the Court, whether he received it ‘in immediate satisfaction of the draft,’ or only with a view to count it over, reserving to himself, until after the examination and count were completed, the privilege of determining whether he would decline or accept the payment.”

It will be noted that the question before the Court was not whether or not what took place was sufficient to pass the property in the coin to the defendant as agent for the plaintiff, but whether or not the jury who found that the property had not passed, were properly instructed by the Court. Unless the case of the presentment of a bill of exchange for payment at maturity can be distinguished from that of a cheque presented for payment at the office of a bank, the law as laid down in this case is slightly at variance with the statements of law to be found in the judgment in *Chambers v. Miller*.

In the latter case as appears from the extracts already given, all the four judges agree in saying that, under the circumstances, a payment is none the less complete merely because the payee has still to count the money.

Again, two at least of the judges, Williams and Byles, J.J., lay it down that no specific act of acceptance is in such a case necessary on the part of the payee, and there is nothing directly at variance with this view in either of the other judgments. What is actually decided by the case is, that where the holder of a cheque presents it to the teller of a bank for payment and the latter places the money on the counter for the former to take up, the property in the money passes from the bank to the holder of the cheque, at all events, the moment the latter places his hand on it, and that his not having yet counted it makes no difference.

I am asked here to carry the law one step further and say that the property passes even before the holder of the cheque, or in this case, the superannuation declaration, takes the money into his physical control. While this goes beyond the actual decision in *Chambers v. Miller*, it is not, I think, contrary to it. It is, on the other hand, directly supported by the dictum already quoted by Mr. Justice Byles, and the statement in "Byles on Bills." Moreover, it is, I think, sound in principle. That which, after all, must govern is the intention of the parties, to be gathered from their actions. Let us see then what takes place here.

Hall goes to the bank with his superannuation declaration intending to draw the sixty-three dollars due to him. He presents the declaration to the paying teller, and the latter, acting for the bank, examines it, and finding it to be in proper form, decides to pay it. For this purpose he counts out sixty-three dollars in bills and places them on the counter in front of Hall for him to take up. The teller has then, for the bank, done all in his power to pass the property in the bills to Hall. Hall has all along had the intention of receiving the money from the bank, since that was his very purpose in going there, and as he sees the teller count out and place on the counter certain bills, his intention evidently is to receive those very bills, subject, perhaps, to his counting them, but certainly subject to nothing else. Apart from the possibility of the amount being incorrect, or some of the bills not genuine, circumstances which it follows from *Chambers v. Miller* will not alone prevent the property in the money from passing, what conceivable reason could there be for Hall's not accepting the money he went to the bank to draw? At the moment, therefore, that the bills were placed on the bank counter, the minds of Hall and of the bank, represented by the teller, were at one. The latter intended to pass the property in those very bills to the former, and the former intended to receive them. The transaction would, therefore, appear to be complete.

I therefore hold that when the sheriff's officer seized the bills now in question, they were the property of the judgment debtor Hall.

It was argued on Hall's behalf, that his case was somewhat different from that of an ordinary customer of the bank, by reason of the bank's being the agent of the Government for the purpose of paying him the money. I do not see that this fact has any bearing on the case. The bank was paying its own money to Hall, in the expectation of being subsequently reimbursed by the Government: but even were it the very money of the Government that was being paid out, the case would be in no respect different. Before the property in the bills passed, they were not seizable, whether they belonged to the bank or to

Government; after the property passed, they were in either case Hall's bills, and so liable to seizure under the execution.

Counsel for the bank contended that even were the payment complete, as between the bank and Hall, at the moment of the seizure, yet the former had still an interest in the money, in the nature of a lien, sufficient to entitle it to prevent its seizure. No authority was cited in support of the existence of this supposed right, and I can see no reason for holding that it does exist. It was argued, that even if the money was Hall's money when seized, the bank had still a right to have it counted: but it is plain from the language of the judges in *Chambers v. Miller*, and would seem to be clear law, apart from that decision, that the bank has no right whatever to compel the payee of a cheque to count money paid to him.

There will be judgment for the execution creditor with costs, and the claim of Hall against the bank will be dismissed with costs, payable by Hall to the bank. There will be the usual order as to the sheriff's costs.

From this judgment the plaintiff Hall and the claimant bank both appealed, and the appeals were argued together in Weekly Court at Ottawa, on the 6th of October, 1901, before Falconbridge, C.J., K.B.

FALCONBRIDGE, C.J.:—I have consulted the authorities referred to in the extremely careful and elaborate judgments of the learned Master at Ottawa, and I have likewise perused and considered the additional citations and references on the argument before me: 11 Am. & Eng. Ency. of Law, 2nd ed., title "Estoppel," p. 385 *et seq.*; *Newington v. Levy* (1870), L.R. 6 C.P. 180; Holmsted & Langton, 2nd ed., 499, 500, 792, 794; Snow's Annual Practice, 1901, 355; *Ainsworth v. Wilding*, [1896] 1 Ch. 673; *Cropper v. Smith* (1884), 26 Ch.D. 700.

I see no reason to differ from the result of the Master's judgment, nor to add anything to what he has written on the subject.

Appeal dismissed with costs.

HIGH COURT OF JUSTICE OF ONTARIO²⁵

Re Chatham Banner Co.

Bank of Montreal's Claim

Section 46 of the Bank Act, 1890, 53 Vict. ch. 31 (D.), providing that "no person, who is not a director, shall be allowed to inspect the account of any person dealing with the bank," does not enable a bank to refuse to disclose its transactions with one of its customers, when the propriety of those transactions is in question in a court of law between the bank and another customer who attacks them, and shows good cause for requiring the information he seeks.

The company had an account with the bank (claimant), and the manager of the company (who had power to sign notes for the company) had also an account at the same office of the bank. The claim of the bank against the company in winding-up proceedings included a number of promissory notes made by the manager and endorsed by the company. The liquidator showed that notes so made and endorsed had been charged at maturity to the company's account by the direction of the manager, and that renewals of these notes formed part of the bank's claim :—

Held, that the liquidator, in examining the agent of the bank for the purpose of showing that the original consideration for several of the notes included in the bank's claim was an advance to the manager for his own private purposes, and that the agent, knowing these notes to be the private debt of the manager, had, at his request, charged them to the company's account, was entitled to refer to the manager's own account with the bank, though the manager was not a party to the proceeding; more especially as the bank had set up certain transfers of cash from one account to the other as justifying them in charging the company's account with the manager's liabilities.

Held, also, that there was nothing to prevent the liquidator, who stood in the place of the company, from impeaching the consideration for the notes offered in proof by the bank, just as the company itself might have done, but no farther.

Held, also, that periodical acknowledgments given by the manager to the bank of the correctness of the company's account could not be set up as a bar to an enquiry into the account, where specific errors in it were charged, to the knowledge of the bank.

An appeal by the liquidator of the Chatham Banner Company (Limited), from a certificate of the Master in Ordinary, dated the 25th April, 1901, showing that he had allowed the claim of the Bank of Montreal against the estate of the company in winding-up proceedings, in full, at \$1,335.36, and had also allowed the claimants their costs. The principal matters in question upon the appeal were, whether the ruling of the Master that the liquidator of the company was not at liberty to go into the private account of the manager of the company with the bank, was right, and whether certain rulings against the liquidator's

right to impeach the consideration of promissory notes making up part of the bank's claim, were right. The facts are stated in the judgment.

The appeal was heard by a Divisional Court composed of STREET and BRITTON, J.J., on the 4th November, 1900.

The judgment of the Court was delivered by STREET, J.:—The insolvents, an incorporated publishing company, carried on business at the city of Chatham, Ontario, and had a bank account in their own name at the agency there of the Bank of Montreal.

One N. F. Ford, was the manager of the company, and also had a private account in his own name in the same agency of the Bank of Montreal. In October, 1896, the directors of the company passed a resolution, which was forwarded to the bank, that all bills, notes, acceptances, etc., must be signed by N. F. Ford, manager, in order to be binding upon the company. A large number of notes were from time to time discounted by the bank, the proceeds of some of them being placed to the credit of Ford, and of others to the credit of the company.

The claim of the bank included a number of notes made by Ford and endorsed by the company. The liquidator showed that a number of notes made by Ford and endorsed by the company had been charged at maturity to the company's account by the direction of Ford, and that renewals of these notes formed part of the claim of the bank. He was then in course of examining the manager of the bank for the purpose of showing that the original consideration for several of the notes included in the claim of the bank was an advance to Ford for his own private purposes, and that the manager, knowing these notes to be the private debt of Ford, had, at his request, charged them to the account of the company. In order to do this, it was necessary to refer to Ford's own account with the bank, and the liquidator was proceeding to do this, when the Master in Ordinary interposed and said that the 46th section of the Banking Act of 1900 prohibited an investigation of Ford's account except in a case in which he was a party. Counsel for the bank then supported the objection taken by the Master, and the liquidator was not permitted to show any of the deposits or withdrawals, or any entries whatever made in Ford's account, although attempts were repeatedly made by him to have the evidence allowed.

In this ruling, in my opinion, the learned Master in Ordinary was wrong. The section of the Banking Act referred to is one of the two sections found under the heading "Annual Statement and Inspection." The first of these two sections requires the directors to submit a full statement to the shareholders of the affairs of the bank; and the second of them, with a view,

probably, of leaving no doubt as to their right to have access to the sources from which they must obtain the information which they are to submit to the shareholders, provides as follows:—

“46. The books, correspondence, and funds of the bank shall at all times be subject to the inspection of the directors; *but no person who is not a director shall be allowed to inspect the account of any person dealing with the bank.*”

This section seems first to have been brought into the Banking Acts as section 37 of ch. 5 of 34 Vict., being the Bank Act of 1871, and the intention of the clause I have underlined probably was to do away with the right which a shareholder in the bank, as a *quasi*-partner, might possibly have asserted of inspecting the accounts of the banking company. But, whatever its intention may have been, it certainly cannot enable the bank to refuse to disclose its transactions with one of its customers, when the propriety of those transactions is in question in a court of law between the bank and another customer who attacks them, and shows good cause for requiring the information he seeks. In the present case there is this further ground for the liquidator's right to inspect the bank's accounts with Ford, that the bank set up certain transfers of cash from one account to the other as justifying them in charging the company's account with Ford's own liabilities, and this defence could not be met without an inspection of both accounts. I have no doubt, then, that the liquidator is entitled to a production of Ford's account with the bank, and to the documents and information necessary to explain the entries found in it so far as they bear on the claim of the bank against the liquidator.

With regard to the other questions raised on the appeal, it appears necessary, having regard to certain rulings made in the course of the enquiry before the Master, to point out that there is nothing to prevent the liquidator, who stands in the place of the company, from impeaching the consideration for the notes offered in proof by the bank, just as the company itself might have done, but no farther. *Prima facie* the notes are evidence of a liability for their amount from the company to the bank, but this *prima facie* case may of course be impeached by showing defects to the knowledge of the bank in the consideration for the notes upon which they claim, in which event it may be necessary for the bank to show that the state of accounts between the Company and Ford is such as to support them in claiming the full amounts represented by the notes.

If, for example, the liquidator should succeed in showing that Ford borrowed from the bank \$300 upon his note, to pay a private liability, and that the bank, at the maturity of this note, charged it, at Ford's request, to the company's account, and then discounted a note of the company's to cover the amount so

charged, and that the last mentioned note were one of those proved on, a *prima facie* case would be made out for reducing the claim of the bank by the \$300. But the bank might show facts which would rebut the *prima facie* case of the liquidator, as, for example, dealings between Ford and the company by which the company received consideration from him entitling him to charge his note to their account.

The liquidator has not been permitted to produce the evidence to which he is entitled for the purpose of investigating the bank's claim, and the matter must, therefore, be referred back to the Master in Ordinary for fuller investigation, and with the declaration that the liquidator is entitled, for the purpose of it, to the evidence afforded by the books and papers in possession of the bank. The bank should pay the costs of the appeal.

I should add that the periodical acknowledgments given by Ford to the bank of the correctness of the company's account, as set forth in his bank book, cannot be set up as a bar to an enquiry into the account, where specific errors in it are charged, as here, to the knowledge of the bank.

I have referred to *Ex p. Darlington, etc., Banking Co.—In re Riches* (1865), 4 D. J. & S. 581; *Gray v. Johnston*, L.R. 3 H.L. 1; *Creighton v. Halifax Banking Co.*, 18 S.C.R. 140; *Bridgewater Cheese Co. v. Murphy*, 23 A.R. 66; *Williamson v. Barbour*, 9 Ch. D. 529.

COURT OF APPEAL, ONTARIO*

Banque Provinciale v. Arnoldi

The insertion by the holder of a promissory note signed by several persons, some of whom are sureties for the others, of the words "jointly and severally" before the words "promise to pay" is a material alteration which avoids the note, and the subsequent cancellation of the words by the holder does not do away with the effect of the alteration, even though the makers of the note do not know of the alteration until after the cancellation.

A promissory note made by several persons, some of whom are sureties, given to the holder after such alteration in renewal of the original promissory note, and in ignorance thereof, cannot be enforced as against the sureties, there being no consideration to support it.

Accepting in renewal of a promissory note, some of the makers of which are to the knowledge of the holder sureties, of a promissory note not signed by one surety discharges the co-sureties.

A judgment recovered against debtors in their firm name for a firm debt is not a bar to the recovery of judgment against them individually upon a promissory note given by them as collateral security for the same debt.

Judgment of Street, J., varied.

Appeal by the defendants other than King Arnoldi, from the judgment at the trial.

The defendants E. C. Arnoldi, E. D. Arnoldi, and H. L. Bowie, who carried on business in partnership under the name of The Citizens' Exchange and Loan Agency, discounted paper under that name with the plaintiffs to the amount of nearly \$5,000. As collateral security for the accommodation a note for \$5,000 was given to the plaintiffs, made by these defendants in their individual names and by the defendants H. W. Bowie, King Arnoldi, Kirby and St. Jacques. This note fell due on the 10th of May, 1899, the debt of the Loan Agency to the plaintiffs being then \$4,800, and a new note for that sum, made by all the defendants except King Arnoldi, was then given to the plaintiffs. The plaintiffs contended that they had reserved all rights upon the \$5,000 note and claimed payment as against all the defendants. The defence was that the \$5,000 had been made void by the insertion in it by the plaintiffs' manager without the knowledge and consent of the defendants, of the words "jointly and severally" before the words "promise to pay," though these words had afterwards been cancelled by him; that the \$4,800 note was signed upon the condition known to the plaintiffs, that King Arnoldi should also sign; and, as to the defendants E. C. Arnoldi, E. D. Arnoldi and H. L. Bowie, that the plaintiffs had taken judgment against them for the same debt upon the note made by them in the partnership name.

The action was tried at Ottawa on the 31st of October, 1900, before Street, J., who held that the \$5,000 note had been made void by the alteration, but that the \$4,800 note had been taken by the plaintiffs in good faith and without knowledge of the condition, and could be enforced against all the defendants except King Arnoldi. He also held that as to King Arnoldi, the plaintiffs did not better their position by falling back on the original consideration, as that was the loan to the agency company only. He also negatived the defence as to the previous judgment.

The appeal was argued before Armour, C.J.O., Osler and MacLennan, J.J.A., on the 26th of March, 1901.

ARMOUR, C.J.O.:—I am unable to agree with the finding of the learned trial Judge that the manager of the bank at the time he took the \$4,800 note made by all the defendants but the defendant King Arnoldi, did not observe the absence of the defendant King Arnoldi's name from it, and that such absence

was not called to his attention by the defendant E. C. Arnoldi, from whom he received it, for I think that the weight of evidence is the other way, and I think the proper conclusion of fact to be that he was told by the defendant E. C. Arnoldi that the defendant King Arnoldi had not signed it, and that he was induced to take it by the assurance of the defendant E. C. Arnoldi that the defendant King Arnoldi would subsequently sign it.

Whatever may be thought of the evidence of the defendant E. C. Arnoldi in this regard standing alone, I cannot ignore the corroboration of it by the defendants H. W. Bowie and Kirby, more especially as the evidence of the defendant Kirby was not contradicted by the manager, and to this must be added the fact that the manager was taking this note as a renewal of the \$5,000 note, which it would not have been without the signature of the defendant King Arnoldi.

This note, therefore, when given to the manager was, to his knowledge, an incomplete instrument, and being such, no recovery could be had upon it by the bank, the defendant, E. C. Arnoldi, having no authority to deliver it to the bank until it was signed by the defendant, King Arnoldi, it having been signed by the parties who signed it upon the distinct understanding that it was not to be used until all the defendants had signed it, and having been handed after it was so signed to the defendant, E. C. Arnoldi, upon that understanding. *Awde v. Dixon*, 6 Exch. 868.

But even if this finding of fact by the learned judge is to stand there could be no recovery upon this note against the defendants who were sureties, for the manager of the bank, when he took this note, took it not as an original note but as a renewal of the \$5,000 note made by the defendants, of whom the defendants E. C. Arnoldi, E. D. Arnoldi and H. L. Bowie were, under the name of the Citizens' Exchange and Loan Agency, the principal debtors, and the other defendants were their sureties, as the manager of the bank well knew, and in taking this note as a renewal of the original note the manager of the bank was bound to see that it was in truth a renewal of it, and that it had the signature to it of the defendant King Arnoldi, and having taken and used it as he did without the signature, the bank must suffer for his neglect, and not the cosureties of the defendant King Arnoldi, and it must be held that such his act and neglect released such co-sureties from their liability upon this note.

It is clear that the bank cannot fall back upon the \$5,000 note and recover against the defendants upon it for this, among other reasons, that the action upon it has been dismissed as against the defendant, King Arnoldi, a joint maker of it, on a ground common to all the joint makers of it, and there is no appeal against such dismissal. *Shillings v. Ward*, (1863), 2 H. & C. 717.

And it cannot fall back and recover against the defendants for the consideration for the reasons given by the learned trial judge.

In my opinion, therefore, the appeal must be allowed with costs, and the action dismissed with costs.

OSLER, J.A. :—The plaintiffs cannot maintain their action against the defendants, King Arnoldi, Kirby, H. L. Bowie and St. Jacques, in respect of this \$5,000 note, because as to them it was avoided by the alteration made therein, with however innocent intention, by their manager. *Carrique v. Beaty*, (1897), 24 A.R. 302, and cases there cited.

As to this I agree with the learned trial Judge.

I am, however, unable to follow him in holding that the defendants, H. W. Bowie, Kirby and St. Jacques are liable upon the other note sued on—the note for \$4,800, of the 10th May, 1899.

That note was intended to be given solely as a renewal of the former note. But when they signed it and parted with it to the bank—assuming for the moment that it was then as to them a completed instrument—they had ceased to be liable upon the original note by reason of the alteration which had been made therein by the holders—an alteration of which they were ignorant and to which they never assented. Therefore, there was no consideration to them for making the second note, and the plaintiffs, being holders with notice, cannot recover against them thereon.

I am also of opinion that these appellants are entitled to succeed upon another ground.

They, together with the defendant King Arnoldi, were parties to the original note as sureties for their co-defendants, E. D. Arnoldi, E. C. Arnoldi and H. L. Bowie, who composed the partnership firm of the Citizens' Exchange and Loan Agency, as the plaintiffs' manager knew, and they signed the renewal upon the express condition that all the parties to the former note should sign it, and that it should not be made use of in any other way as a security until this was done. I think the evidence of the defendant, E. C. Arnoldi, that the manager knew this when it was handed to him in its incomplete state, wanting the signature of King Arnoldi (which has never been in fact obtained), is amply corroborated. As regards those three parties, therefore, the bank never acquired or held it as a complete instrument, and cannot maintain any action upon it. *Foster v. Mackinnon*, L.R., 4 C.P. 704; *Lewis v. Clay*, 67 L.J.Q.B. 224; *Brown v. Howland*, 9 O.R. 48, and cases there cited; affirmed (1887), 15 A.R. 750; *Ware v. Allen*, (1888), 9 S.C. Reporter 174.

The only remaining question is as to the liability of the other three defendants, E. C. Arnoldi, E. D. Arnoldi and H. L. Bowie, on the \$4,800 note, which is of little importance except as regards

the costs of the action, as the bank has already recovered judgment against their firm on the last of the series of the monthly notes for which this note of the 10th May, 1899, was supposed to be held as collateral.

These defendants, by their partner E. C. Arnoldi, put forward this note as a completed note for the purpose of inducing the manager to discount their firm's notes at one month, and as a security on the faith of which the manager did in fact discount the latter note, the proceeds of which they received and applied by means of their firm's cheque. I do not think they can now be heard to say that as to them the \$4,800 note was not a valid instrument and, therefore, as to them the judgment should be affirmed and their appeal dismissed.

MACLENNAN, J.A.:—I think the appeal should be allowed.

The action was dismissed as against King Arnoldi, and there is no appeal against that judgment.

The formal judgment is against all the other defendants, but it is not stated upon which of the notes sued upon it has been granted. This is explained in the reasons for judgment of the learned judge, wherein he expresses the opinion that the first note, namely, that for \$5,000, was avoided by the alteration made by the plaintiffs' agent without the knowledge or consent of some of the parties thereto. The recovery, therefore, must be taken to be upon the note of the 10th May, 1899, for \$4,800.

I am of opinion that the learned judge was right in holding that the first note was avoided by the alteration, although it was not made with any wrongful or fraudulent intention. The manager's instructions from the head office were to procure a joint and several note from the parties who were offered as sureties. Unfortunately the note was drawn as a joint note merely, and not joint and several, was signed by all the parties, was brought to the agent, who accepted it and advanced the money upon it, without observing that it was not joint and several. This he discovered a few days afterwards, and sent for Mr. E. C. Arnoldi and drew his attention to it. Mr. Arnoldi said the omission was an oversight, that he intended to make it joint and several. Thereupon the words "jointly and severally" were inserted by the manager, with Mr. Arnoldi's concurrence, and it was arranged that they should go together to the parties and get them to approve of the change. This was never done, Mr. Arnoldi and Mr. Bowie, the only other persons aware of the alteration, not caring to go round to get the approval of the other signers. Some days afterwards the manager struck his pen through the words which he had interlined. I think we must hold that the alteration avoided the note, and that its validity was not restored by the subsequent cancellation. The Bills of Exchange Act, 1890, sec. 63; Maclaren on Bills and Notes, pp. 345, 346;

Chalmers on Bills, 5th ed., pp. 213, 214; *Master v. Miller*, 1 Sm. L.C., 10th ed., 747.

The first note having been thus avoided shortly after its date in November, 1898, that circumstance has an important bearing upon the question of the liability of the appellants other than Arnoldi and his wife, and Mrs. Bowie, who are the principal debtors. There is no doubt whatever that the only consideration to these appellants for giving the note of the 10th of May, 1899, was their supposed liability upon the note for \$5,000, which became due upon that day. The new note was signed solely for the purpose of renewing *pro tanto* the old one. This being so, and there being no liability on the old note, there was no consideration for the new one, as between these appellants and the bank, and they are entitled to succeed in their appeal on that ground.

I am also of opinion that it is proved that the appellants Kirby and St. Jacques signed the new note upon the express condition that it should also be signed by King Arnoldi, who had signed the old note with them, and that not having been signed by him, it never became, in the hands of the payees, an obligation binding upon these appellants. I agree with the Chief Justice that the weight of the evidence is in favour of the view that the want of King Arnoldi's name was observed by the manager at the first, and was regarded by him as a defect which ought to be remedied to make it the instrument intended by all the parties. But even if it were otherwise the contract was one between the makers and the bank, and unless it was completed in the manner intended it never became binding. I, therefore, think, that these two appellants are entitled to succeed on this ground also. *Lewis v. Clay*, 67 L.J. Q.B. 224; 77 L.T.N.S. 653.

There are also other grounds on which, perhaps, our judgment in favour of the appellants, the sureties might be rested, but I think the foregoing are quite sufficient.

The case is different as regards the appellants E. C. Arnoldi and his wife, and Mrs. Bowie, who were the principal debtors. The note for \$4,800 represented a real debt due by them to the bank, and they received the benefit of it. By means of it they paid off the \$5,000 note, on which they were undoubtedly liable, for the alteration was made with the concurrence of a member of the firm. There is, therefore, no reason why they should not be held liable, or why the judgment against them should not be allowed to stand. It was contended that a judgment for the same debt on another note dated the 19th of September, 1899, at one month's date recovered against them by their partnership name of the Citizens' Exchange and Loan Agency was a bar to the present action; but the answer to this is that the present

action is upon a different contract, and there is no reason why there should not be a judgment upon it, although it be for the same debt.

The appeal of the defendants Kirby, St. Jacques and H. W. Bowie should be allowed with costs, and the action against them should be dismissed with costs, and the appeal of the other defendants should be dismissed with costs.

Appeal of Kirby, St. Jacques, and H. W. Bowie allowed.

Appeal of other defendants dismissed.

UNREVISED FOREIGN TRADE RETURNS, CANADA

(000 omitted)

IMPORTS

| <i>Six months ending 30th December—</i> | | 1900-1901 | | 1901-1902 | |
|---|--|------------------|------------------|------------------|------------------|
| Free | | \$ 36,209 | | \$ 38,627 | |
| Dutiable | | 52,558 | | 56,936 | |
| | | <u>\$ 88,767</u> | | <u>\$ 95,564</u> | |
| Bullion and coin | | 2,819 | \$ 91,586 | 4,098 | \$ 99,662 |
| <i>Month of January—</i> | | | | | |
| Free | | \$ 5,520 | | \$ 5,701 | |
| Dutiable | | 7,511 | | 8,947 | |
| | | <u>\$ 13,031</u> | | <u>\$ 14,648</u> | |
| Bullion and Coin | | 272 | \$ 13,303 | 407 | \$ 15,055 |
| Total for seven months | | | <u>\$104,889</u> | | <u>\$114,717</u> |

EXPORTS

| <i>Six months ending 30th December—</i> | | 1900-1901 | | 1901-1902 | |
|---|------------------|------------------|--|------------------|------------------|
| Products of the mine | \$23,663 | | | \$ 21,770 | |
| " Fisheries | 6,504 | | | 8,302 | |
| " Forest | 19,666 | | | 20,375 | |
| Animals and their produce | 36,974 | | | 37,919 | |
| Agricultural produce | 13,089 | | | 16,385 | |
| Manufactures | 8,063 | | | 8,796 | |
| Miscellaneous | 43 | | | 19 | |
| | <u>\$108,002</u> | | | <u>\$113,568</u> | |
| Bullion and Coin | 1,132 | \$109,134 | | 1,500 | \$115,068 |
| <i>Month of January—</i> | | | | | |
| Products of the mine | \$ 1,828 | | | \$ 1,681 | |
| " Fisheries | 987 | | | 1,588 | |
| " Forest | 744 | | | 1,046 | |
| Animals and their produce | 2,890 | | | 3,812 | |
| Agricultural produce | 2,307 | | | 3,620 | |
| Manufactures | 1,006 | | | 1,522 | |
| Miscellaneous | .. | | | .. | |
| | <u>\$ 9,762</u> | | | <u>\$ 13,269</u> | |
| Bullion and Coin | 125 | \$ 9,887 | | 15 | \$ 13,284 |
| Total for seven months | | <u>\$119,021</u> | | | <u>\$128,352</u> |

SUMMARY (in dollars)

| <i>For seven months—</i> | | 1900-1901 | | 1901-1902 | |
|---|--------|---------------|--------|---------------|--|
| Total imports, other than bullion and coin .. | | \$101,798,000 | | \$110,211,708 | |
| Total exports, other than bullion and coin .. | | 117,764,000 | | 126,837,494 | |
| Excess of exports | (Exp.) | \$15,966,000 | (Exp.) | \$16,625,786 | |
| Bullion and coin, net | (Imp.) | 1,834,000 | (Imp.) | 2,991,120 | |

STATEMENT OF BANKS acting under Dominion Government charter for the months of December, 1901,
January and February, 1902, and comparison with February, 1901:

LIABILITIES

| | 31st Dec., 1901 | 31st Jan., 1902 | 28th Feb., 1902 | 28th Feb., 1901 |
|---|--------------------|--------------------|--------------------|--------------------|
| Capital authorized | \$ 76,326,666 | \$ 76,326,666 | \$ 77,126,666 | \$ 74,875,332 |
| Capital paid up | 67,591,311 | 67,621,011 | 68,041,136 | 66,560,838 |
| Reserve Fund | 37,364,708 | 37,483,053 | 37,567,753 | 35,092,654 |
| Notes in circulation | \$ 54,372,788 | \$ 48,586,529 | \$ 49,450,994 | \$ 45,905,942 |
| Dominion and Provincial Government deposits .. | 7,686,734 | 7,066,743 | 6,726,650 | 6,574,846 |
| Public deposits on demand in Canada | 102,309,034 | 95,844,789 | 94,864,660 | 92,182,219 |
| Public deposits after notice | 233,431,229 | 237,011,833 | 238,996,123 | 207,096,610 |
| Deposits elsewhere than in Canada | 31,355,262 | 31,410,770 | 29,839,213 | 20,974,155 |
| Loans from other banks in Canada, secured, including bills rediscounted | 737,473 | 695,366 | 661,374 | 1,694,983 |
| Deposits from and balances due other banks | 4,155,273 | 3,482,670 | 3,472,284 | 2,453,557 |
| Due to agencies of the bank and to other banks in United Kingdom | 3,754,773 | 3,541,879 | 3,337,960 | 3,055,735 |
| Due to agencies of the bank and to other banks else- where than in Canada and the United Kingdom | 1,052,699 | 1,461,302 | 976,519 | 786,832 |
| Other liabilities..... | 10,236,648 | 10,632,845 | 9,709,421 | 6,027,727 |
| Total liabilities..... | \$449,091,985 | \$439,734,790 | \$438,035,270 | \$386,752,685 |

ASSETS

| | | | | |
|--|---------------|---------------|---------------|---------------|
| Specie..... | \$11,571,337 | \$11,843,574 | \$11,498,021 | \$11,839,628 |
| Dominion notes..... | 21,405,397 | 21,891,097 | 22,156,454 | 20,628,391 |
| Deposits to secure note circulation..... | 2,568,918 | 2,568,918 | 2,569,513 | 2,392,973 |
| Notes and cheques on other banks | 16,993,896 | 12,317,704 | 13,374,508 | 11,736,806 |
| Loans to other banks in Canada secured, including bills rediscounted | | | | |
| Due by other banks in Canada..... | 737,473 | 695,366 | 659,847 | 1,659,972 |
| Due from agencies of the bank and from other banks in United Kingdom | 5,823,200 | 4,565,263 | 4,629,921 | 3,722,577 |
| Due from agencies and from other banks elsewhere than in Canada and the United Kingdom | 6,883,729 | 6,111,677 | 7,105,453 | 5 475,825 |
| Dominion and Provincial Government securities .. Canadian municipal securities, and British or foreign or colonial public securities other than Canadian Railway and other bonds, debentures and stocks .. | 11,456,756 | 12,666,808 | 11,796,698 | 9,490,052 |
| Call and short loans on stocks and bonds in Canada .. | 9,768,701 | 9,756,418 | 9,961,510 | 11,395,416 |
| Call and short loans elsewhere than in Canada.... | | | | |
| Current loans in Canada..... | 14,528,036 | 14,600,761 | 13,456,008 | 11,401,882 |
| Current loans elsewhere than in Canada | 31,994,130 | 33,167,297 | 33,919,704 | 27,496,605 |
| Loans to Dominion and Provincial Governments.. | 37,651,941 | 38,079,718 | 36,559,397 | 33,389,719 |
| Overdue debts | 45,263,961 | 44,189,514 | 44,212,911 | 32,404,832 |
| Real estate..... | 289,158,657 | 287,722,080 | 292,059,778 | 275,226,993 |
| Mortgages on real estate sold | 32,160,566 | 28,719,992 | 26,229,854 | 20,842,273 |
| Bank premises | 3,793,626 | 3,165,176 | 3,212,879 | 2,551,445 |
| Other assets | 2,105,705 | 2,117,479 | 2,261,512 | 2,242,934 |
| | 886,497 | 963,858 | 970,412 | 1,053,518 |
| | 730,250 | 743,785 | 721,000 | 614,957 |
| | 6,753,172 | 6,780,209 | 6,785,754 | 6,411,752 |
| | 9,841,652 | 8,208,914 | 7,426,747 | 6,313,958 |
| Total assets | \$562,077,793 | \$550,875,792 | \$551,629,125 | \$497,492,718 |
| Loans to directors or their firms | \$10,820,718 | \$11,016,744 | \$11,217,473 | \$12,594,088 |
| Average amount of specie held during the month.. | 11,672,573 | 11,715,593 | 11,713,115 | 11,518,399 |
| Average Dominion notes held during the month .. | 21,017,261 | 21,196,976 | 21,964,715 | 20,236,577 |
| Greatest amount of notes in circulation during month | 58,650,297 | 53,386,332 | 50,283,248 | 47,200,121 |

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(000 omitted)

| | MONTREAL | | TORONTO | | HALIFAX | | HAMILTON | |
|------------|----------|---------|---------|---------|---------|---------|----------|---------|
| | 1900-01 | 1901-02 | 1900-01 | 1901-02 | 1900-01 | 1901-02 | 1900-01 | 1901-02 |
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| March ... | 54,882 | 69,580 | 40,581 | 50,062 | 5,868 | 6,191 | 3,171 | 3,398 |
| April | 55,915 | 69,132 | 38,842 | 49,079 | 6,004 | 6,923 | 3,099 | 3,519 |
| May | 62,332 | 84,507 | 43,215 | 55,608 | 5,984 | 6,549 | 3,493 | 4,031 |
| June | 65,543 | 79,746 | 44,545 | 50,697 | 6,187 | 7,047 | 3,342 | 3,112 |
| July | 61,293 | 80,198 | 44,400 | 52,867 | 7,184 | 8,618 | 3,194 | 3,555 |
| August .. | 58,229 | 71,723 | 37,075 | 49,253 | 7,162 | 8,421 | 3,035 | 3,149 |
| September | 57,686 | 73,368 | 38,933 | 51,828 | 6,351 | 6,681 | 3,176 | 3,173 |
| October .. | 65,983 | 78,250 | 47,246 | 53,983 | 6,920 | 7,250 | 3,642 | 4,445 |
| November | 68,656 | 85,581 | 47,550 | 54,957 | 6,921 | 7,572 | 3,481 | 3,736 |
| December | 63,311 | 75,141 | 48,325 | 60,687 | 6,946 | 8,429 | 3,842 | 3,824 |
| January .. | 71,115 | 76,995 | 54,299 | 64,211 | 7,359 | 8,440 | 3,684 | 3,832 |
| February . | 51,138 | 74,009 | 41,946 | 54,128 | 6,116 | 6,683 | 2,922 | 3,171 |
| | 736,083 | 918,230 | 526,957 | 647,360 | 79,002 | 88,804 | 40,081 | 42,945 |

| | WINNIPEG | | ST. JOHN | | VANCOUVER | | VICTORIA | |
|------------|----------|---------|----------|---------|-----------|---------|----------|---------|
| | 1900-01 | 1901-02 | 1900-01 | 1901-02 | 1900-01 | 1901-02 | 1900-01 | 1901-02 |
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| March ... | 7,320 | 7,839 | 2,509 | 2,860 | 3,378 | 3,196 | 2,372 | 2,243 |
| April | 7,091 | 7,634 | 2,492 | 3,060 | 3,543 | 3,511 | 2,106 | 2,570 |
| May | 9,762 | 8,681 | 2,945 | 3,341 | 3,717 | 3,673 | 2,704 | 2,962 |
| June | 9,612 | 8,547 | 2,978 | 3,364 | 3,843 | 4,058 | 2,758 | 2,746 |
| July | 9,395 | 9,213 | 3,468 | 3,890 | 4,286 | 4,610 | 2,986 | 2,806 |
| August.... | 8,173 | 9,324 | 3,561 | 3,805 | 4,391 | 4,498 | 2,875 | 2,441 |
| September | 7,320 | 10,314 | 3,340 | 3,394 | 4,301 | 4,215 | 2,639 | 2,133 |
| October .. | 9,183 | 15,174 | 3,362 | 3,905 | 4,956 | 4,948 | 3,070 | 2,772 |
| November | 11,618 | 21,532 | 3,115 | 3,296 | 4,008 | 4,402 | 3,151 | 2,516 |
| December | 10,869 | 19,155 | 3,213 | 3,611 | 3,686 | 3,848 | 2,443 | 2,169 |
| January .. | 9,623 | 14,363 | 3,092 | 3,236 | 3,369 | 3,847 | 3,257 | 2,783 |
| February . | 7,158 | 10,067 | 2,742 | 2,915 | 2,674 | 3,228 | 2,181 | 1,925 |
| | 107,124 | 141,843 | 36,817 | 40,677 | 46,152 | 48,034 | 32,542 | 30,066 |

QUESTIONS ON POINTS OF PRACTICAL INTEREST

FORM FOR QUESTIONS

The Editing Committee

Journal of the Canadian Bankers' Association, Toronto.

Please give your opinion on the following point by mail*
in the next issue of the Journal

Question :

Answer is desired by mail, stamp should be enclosed.

If the question does
not call for an answer
by mail, the enquirer's
name need not be given
if he so prefers.



JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

JULY—1902

THE HISTORY OF CANADIAN CURRENCY, BANKING AND EXCHANGE

X.—METALLIC CURRENCY BEFORE THE UNION*

IN the last article on the metallic currency, it was shown that the highly attractive and abstractly reasonable plan for the establishment of a uniform currency throughout the Empire had completely failed. As in so many other instances of a like nature, this was due to the fact that official aspirations had been taken

* Chief sources :

- Dominion Archives ; State Papers, Lower and Upper Canada.
- Journals of the Assembly, Lower Canada.
- Journals of the Special Council, Lower Canada.
- Journals of the Assembly, Upper Canada.
- Ordinances of the Governor General and Special Council, Lower Canada.
- British Blue Books relating to Canada, 1833-40.
- An Historical and Descriptive Account of British America. By Hugh Murray. Three vols. Edin., 1839.
- A History of Currency in the British Colonies. By Robert Chalmers, London, n.d.
- The Monthly Review*, Vol. I, 1841.
- The Quebec Gazette*, 1833-38.
- The Montreal Gazette*, 1837.
- The Chronicle and Gazette*, Kingston, 1839-40.
- The Brockville Recorder*, 1838.

as a substitute for a careful study of the historical development and actual facts of the colonial exchange relations. The exigencies of trade and the course of exchange are not to be regulated by rigid decrees. In attempting to establish an arbitrary rate of exchange between Canada and Britain in 1825, the Home Government had at first fixed the rate at three per cent. premium, offering a bill for £100 in Britain for £103 paid in British money in Canada. This was soon found to be too high, those having payments to make preferring to send coin or private bills, hence the Government lowered the rate to one and a half per cent. premium. In 1828-9 this, in turn, proved to be too low, the market rate having risen to about four per cent. real exchange, or twelve per cent. by the customary rating. Commissariat bills therefore passed to a premium, marked by the difference between Government and market rates. The British coins, which alone were accepted in payment for such bills, bore a corresponding premium. The soldiers, who were paid in half crowns at the rate of 2s. 9d. currency, immediately disposed of them at the nearest shop for 3s. in current money or goods. The merchants, in turn, immediately conveyed the coins to the Government chest, whence they had just emerged, for the purchase of Government exchange.

Thus the system which was to furnish the colonies with a circulating medium of British money most effectively frustrated its own object. The coins undoubtedly remained in the colony, but only in the hands of the colonial agent of the Imperial Treasury.

After January 1st, 1833, the Government ceased to furnish exchange for British currency, at a fixed rate. Thereafter the Government exchange was disposed of at market rates, and the advantage, which had previously gone to the parties receiving the Government payments, now went to the Treasury. The Military Chest in particular, was transferred to the Bank of Upper Canada, through which, thereafter, commissariat payments were made in the Upper Province.

On the 7th of September, 1838, an Order-in-Council was passed, repealing, as far as the colonies in America and the West Indies were concerned, the former Order-in-Council of 23rd March 1825, which was the basis of the attempt to establish the

British coinage throughout the Empire, and which had provided that in colonies where the dollar was a legal tender, the payment of British silver to the amount of 4s. 4d. should be equivalent to the payment of a dollar.

Bank notes in Canada furnished a quite efficient medium of exchange, down to the limit of one dollar, but as regards fractional currency there was a more or less constant famine, more particularly in the smaller towns and newer districts. The result was that in ordinary retail trade there was great difficulty in making change, or paying for small purchases. The books of the retail traders were filled with small accounts, which were naturally difficult of collection and the occasion of considerable loss to the merchants, and of abnormally high prices for the paying customers.

To meet this state of affairs there were various proposals. One of the most reasonable was that of Mr. Jas. Buchanan, the British Consul at New York, and which he submitted to the Colonial Office in 1831. It covered several suggestions of the time, including that of a separate colonial coinage, which was much favored by the banks. Briefly stated, he proposed that the British Government should supply the British North American colonies with a coinage of their own, on the basis of the money of account. In other words, the Halifax currency, hitherto a purely nominal standard, should be given a definite, visible embodiment in the shape of a series of coins to serve as a fractional currency for the colonies. In accordance with the usages of the colonies, the series was to represent a combination of the old and new American standards. The basis proposed was the colonial pound of four dollars, and a dollar of five shillings. But, as the denominations of one dollar and upwards were represented by paper money of sufficient credit, it required only that coins should be struck representing a half-dollar, a shilling, six-pence and pence. In order that the coins might be retained in the country for domestic use only, they should be rated somewhat above their bullion value. Thus seventy-five shillings might be coined from one pound of silver, instead of seventy-two, according to its intrinsic value. This would give thirty half-dollars, or one hundred and fifty six-pences. The King's head should occupy one side of the coins and a colonial device the other. The

copper coinage being, if possible, still more urgently needed, he proposed that by a similar expedient one pound of copper be made into twenty-four pennies, or forty-eight half-pennies.

From the point of view of supplying the need for a fractional currency, these proposals were quite sound and reasonable. They expressed, indeed, the essence of our present system of coinage, except that as the newer American system of dollars and cents came to prevail in Canada, the coinage was wisely adapted to those standards.

What the plan did not provide for was a uniform single basis of legal tender at bullion rating, to serve as a basis for exchange. Without this the fractional currency, or some of it, might have to serve the triple purpose of a medium of domestic exchange, an unlimited legal tender, and a medium of international exchange. But a legal tender consisting of a coinage rated above its intrinsic value would simply result in a special privilege to the banks at the expense of the public, by making their notes redeemable at a discount. With a bullion standard of legal tender, and a fractional currency on the proposed plan at a limited legal tender, the scheme would have been quite sound. There can be no doubt that the great need of the time was the separation of the fractional currency from the exchange function of a legal tender, with which, however, it was at that time completely merged.

Though no action was taken on Mr. Buchanan's proposal it served to point the way towards a better system. Meantime, as in the political matters of the day, it seemed to be necessary that the existing evils should be greatly aggravated before either the Imperial or colonial authorities could be forced to remedy them.

The condition of the copper currency in particular had been going from bad to worse, until almost anything in the shape of a copper coin passed current. From mutilated and worn half-pence there was an easy transition, through hammered farthings, to trade tokens and brass buttons. It soon came to be known abroad that anything resembling a half-penny would pass in Canada. One of the Dorking emigrants, for instance, writing home from Upper Canada, says; "Tell John to bring as many farthings as he can get and old half-pence, as they go for as much as a penny piece, they call them 'coppers.'"

Naturally these conditions suggested to enterprising speculators the possibility of dealing in spurious copper coins on a large scale. Considerable quantities of such coins were brought from Birmingham and other English towns, and put in circulation. When the Government sent out supplies of British copper coins through the Commissariat Department, the cheaper rivals already in the field soon crowded them out. A Glasgow paper, in 1833, gives a circumstantial account of a trade carried on between the North American colonies and the Clyde, by which new British copper coins were regularly imported from the colonies. Indeed a regular traffic was established in the exchange of spurious copper tokens for the standard copper coinage. The British Treasury complained that in Upper Canada the rating of the Imperial copper coins afforded a profit of from 20 to 25 per cent. on a return of them to Britain ; it therefore declined to send any more.

So profitable and brisk was the trade in spurious copper coin that before the end of 1833 the business seems to have been somewhat overdone. In Quebec and Montreal there was such a glut of copper currency that it was employed in considerable bulk in making small payments. A correspondent of the *Quebec Gazette* writes as follows : " There are several manufactures in town which, together with our large supply of half cents, farthings, buttons, and our former stock of copper coins of all ages and all countries, make the article a complete drug on the market ; so much so that the banks and others have actually refused to take the farthings and cents for more than half a copper."

In 1833 Governor Aylmer had recommended to both sections of the Legislature of Lower Canada that some measures be taken to replace by a better coinage the metallic currency than in use. But the majority of the Assembly, being steadily opposed to any interference with the French coinage, declined to discuss the subject. In the Council, however, the matter was taken up and referred to a committee, which reported against attempting to supply a small silver currency, but in favour of furnishing copper half-pence on the basis of the Halifax currency. Lord Aylmer endorsed the latter proposal, and suggested to the Colonial Secretary, Lord Goderich, that £5,000 worth might be sent out, to be put in circulation through the Commissariat Office.

However, no effective remedy was adopted, and the evils connected with the fractional currency, especially the copper portion of it, continued to spread throughout the whole colony. In 1835 the importation of spurious copper coins was still going on, a large consignment being disposed of at $12\frac{1}{2}$ per cent. discount, which still afforded a profit of 50 per cent. on the investment. It was suggested that if the Legislature would do nothing the magistrates might take action. From the opening of navigation to the first of June, 1837, the amount of copper coin imported at Quebec was stated by the *Gazette* to be fifty hundred-weight. The merchants there decided not to accept of them at a higher rate than two for a penny. About the beginning of August there were seized by the Kingston customs officers, three cases on their way to Toronto, "filled with that villainous trash lately imported into the Upper Province and distributed among the inhabitants as coppers." In October, 1837, we find that the Commissariat was taking certain copper coins at the following rates; Irish harp half-pence and Demerara half-stivers at 120 to the dollar, English pennies were accepted at 60, half-pennies at 120, and farthings at 240 to the dollar.

After the suspension of specie payments by the banks, the want of legitimate small change greatly increased, and the needs for a fractional currency were met by spurious copper and numerous private issues of shinplasters. At length the banks in self-defence were forced to take action. It had already been suggested, from time to time, that the banks should supply a fractional currency of their own. The suggestion was at last acted upon by the banks of Lower Canada, as far at least as the copper coinage was concerned. They combined to obtain from Britain a supply of bank tokens, of the same weight and standard as the British penny and half-penny. The first issue was dated 1837, but did not pass into circulation till the spring of 1838. Other issues followed, bearing later dates and different devices. The first importation amounted to £5,000, being made up of £2,000 for the Bank of Montreal and £1,000 for each of the others, the City Bank, the Banque du Peuple, and the Quebec Bank. The only distinction in the coins was the name of the particular bank from which they were issued.

It was expected that by the issue of these coins the spurious

coppers and the 3d. and 6d. shinplasters would be driven out. However, some of the French-Canadians refused to accept the bank tokens, apparently on patriotic grounds; moreover, the spurious copper was more than able to hold its own against its more respectable rivals. In August 1838 it was reported that the base coins were causing more confusion than ever in the retail trade of the Lower Canadian cities, especially Quebec. The bank tokens previously issued had almost entirely disappeared, displaced by others worth little more than farthings. At a meeting of the retailers in Quebec, it was resolved that they should not receive in payment any other than the British copper coins, the bank tokens, and the cents or other legal copper coinage of other countries. They also called upon the Executive to take action in the matter. It was pointed out, however, that it would be difficult to effect a reform until a sufficient supply of small silver was introduced.

It was a further suggestion of the time that the banks should issue silver tokens as well, answering to the 3d. and 6d. pieces. This idea was not taken up, but the Bank of Montreal undertook to import £10,000 worth of five and ten cent pieces from the United States mint. This was one more advance towards the final adoption of the American standard of currency.

In 1839 the Special Council of Lower Canada at last took action with reference to the spurious copper coinage. On February 21st an ordinance was passed, "to prevent the fraudulent manufacture, importation, or circulation of spurious copper or brass coin." The preamble to the ordinance states that, "great frauds have been practised upon the inhabitants of the Province, by evil disposed persons who have imported into the same or manufactured therein, spurious copper, or brass coin, or tokens, for the purpose of passing them for a much higher value than they were intrinsically worth." It provides that nothing but the lawful copper coin of the United Kingdom shall be imported or manufactured, except by permission from the Governor. The ordinance was to continue in force till 1842; but in 1840 it was amended and made permanent. The amendment placed further limitations upon any permission given by the Governor to persons or corporations (practically the banks), permitted to import or manufacture copper coins. Such tokens must bear

the name of the corporation issuing them, and must be redeemable in lawful money of the Province.

The proposal to issue copper bank tokens had been considered in Upper Canada also, in 1837. However, the Hon. John Macaulay, of the Bank of Upper Canada, and others reported against it and nothing was done at the time. Some years afterwards the Bank of Upper Canada obtained and exercised the right to issue bank tokens.

A constant agitation had been going on for some years in the United States as to the proper ratio to each other of their gold and silver coins. On the basis of fifteen to one the gold coins were somewhat undervalued as compared with silver, and tended to leave the country or pass into hoards. According to the experts the proper proportion was about fifteen and five-eighths to one. The long controversy was suddenly ended in 1834 by the adoption of the new standard of sixteen to one, and the lowering of the weight of the gold in the eagle from 11 dwts. 6 grs. to 10 dwts. 18 grs. This had the opposite effect of over-rating the gold coins and tending to drive silver out of the country. This tendency was greatly increased by the Californian and Australian gold discoveries. Between the years 1848 and 1851 silver was so largely exported from the United States that fractional currency was very scarce and retail trade greatly hampered.

Dependent as Canada was upon American exchange and currency conditions, the alteration of the American legal ratio of gold to silver considerably affected the Canadian money market and led to a renewal of the agitation for a re-adjustment of the currency values. According to the explanations of the time, the gold from Canada tended to pass to the United States owing to its increased valuation there. But silver did not return to Canada because, owing to the demand for metallic currency of any kind in the United States during the crisis of 1837, the calling in of balances due from Canada tended to drain the country of its silver currency as well. We find, however, that after the suppression of small notes in the adjoining States, Canadian bank notes had found an extensive circulation there. But when specie had gone to a high premium these notes were naturally collected and returned for redemption. A good deal of coin was also being sent from Upper to Lower Canada in payment of adverse balances.

The claim was made, in a report on currency and banking by a Committee of the Assembly of Upper Canada, that the chief reason for the loss of specie was the higher rating of the coins in the United States, and the depreciated French currency in Lower Canada by means of which the banks there redeemed their notes. The report, therefore, advocates the raising of the values of the coins used in Upper Canada as a means of retaining the currency.

The real reason for the apparent increase in the value of British coins in the United States was the increased rate of exchange on Britain. The British silver was returned to Britain, not as bullion, but as so many bills of exchange which would be accepted there at their face value. Thus in America the British crown, half-crown and shilling were rated as though their face value were their bullion value, while the American silver went to Britain simply as bullion. Regarded from this point of view there was some justification for the Canadians seeking to rate these coins at their exchange value, instead of at their bullion value. An Act was accordingly passed in Upper Canada which re-adjusted the value of the current coins. The following were the new rates appointed :

| | £ | s | d |
|---|---|----|---|
| United States eagle (old), weighing 11 dwts. 6 grs | 2 | 13 | 4 |
| " " (new), " 10 " 18 " | 2 | 10 | 0 |
| British guinea, weighing 5 dwts, 9 grs | 1 | 5 | 6 |
| British sovereign " 5 " 3 " | 1 | 4 | 4 |
| British crown | | 6 | 0 |
| Spanish milled dollar, Mexican dollar, United States dollar | | 6 | 0 |
| Shilling | | 1 | 3 |

These ratings had already been adopted by Nova Scotia, from which they were doubtless taken.

By the previous Act of 1826 the British crown had been rated at 5s. 9d. and the shilling at 1s. 2d. When the new Act was referred to the Commissioners of the Treasury and the Lords of Trade, they pointed out that the previous Act of 1826 had been based upon the British rating of the dollar at 4s. 4d. stg. Thus, the pound, Halifax currency, being equal to \$4, was the equivalent of 17s. 4d. stg., which was therefore specified in the Act as equivalent to 20s. currency. But by this new Act of 1836, though the pound currency is still called the equivalent of \$4, by rating the British crown at 6s. currency, the pound currency is reduced from 17s. 4d. stg. to 16s. 8d. stg. Or taking the shilling

at the new rating of 1s. 3d. currency, the pound currency becomes only 16s. stg. Now, these changes very materially affect the contracts and transactions of the Military Chest and the Commissariat Department. They are of the opinion, therefore, that the Act should not be confirmed, without full explanations as to the need for it.

As an instance of the manner in which the new Currency Act affected the British Commissariat Department, we find that Mr. Marks, in charge of the dock yard at Kingston, in presenting his draft for £500 at the Bank of Upper Canada, in Kingston, was paid in British half-crowns at the new rating of three shillings currency. But, as Mr. Marks had to make his payments on a basis fixed by the British Government, he could not adjust his payment to the new basis established in Upper Canada, hence his accounts showed a loss equivalent to the difference between the old and new ratings. The matter was adjusted for a time by the Bank of Upper Canada paying the Government drafts in American silver, the rating of which had not been changed.

As indicated by the Treasury officials, by the new scale of values the British shilling became the cheapest legal tender in the country and soon displaced all other kinds of legal tender coins, gold or silver. The others either left the country or passed to a premium.

Though finding the act of 1836 very objectionable, and the explanations furnished by Governor Head not at all satisfactory, yet, since the Governor had sanctioned it and the act had only four years to run, it was not thought advisable to disallow it. But, in case the Legislature should find it necessary to frame any other acts with reference to the currency, a paper on the subject, prepared by the Treasury Department, was sent for their guidance.

In this paper the Lords of the Treasury go into the history and present condition of the monetary equivalents between Britain and America. The dollar had formerly been rated at 4s. 6d. which was taken as the standard par of exchange. But it was now found that the real bullion value of the dollar was only 4s. 2d. Consequently, when exchange was at par on the bullion basis it was at eight per cent. premium on the standard par basis. Now, in fixing the value of the British crown at 6s. while leav-

ing the dollar rate at 5s., the crown was being rated on the bullion basis of 4s. 2d. to the dollar. But the shilling in being rated at 1s. 3d. was on the basis of the dollar at 4s. The shilling was therefore considerably over-rated. Had the shilling been made legal tender to a limited amount this would have caused but little injury. But where it was an unlimited legal tender it naturally drove all other coins out of circulation. Such is the gist of the observations of the Lords of the Treasury.

It is to be observed that in all these discussions, when the British silver is referred to as rated at the bullion value of dollars in sterling, it is not to be understood as meaning that the value of the bullion in the British silver coins is of that standard. What is meant is that the exchange value of the British silver is its face value, which is equivalent to the sterling, or gold bullion standard of the British currency. Thus the British silver as bullion is one thing, the British silver as an exchange on Britain is quite another, and it is this last which, being reckoned at sterling value, is therefore rated at 6s. currency.

It may be as well, at this point, to explain a little more fully how there came to be a difference between the real and the nominal rates of exchange. As has been already pointed out, the old rating of the dollar established by the British mint was 4s. 6d. Upon this the normal or standard par of exchange continued to be calculated, and premiums and discounts were reckoned from this basis. Now the dollar being rated, on the one hand, at 4s. 6d. stg., and, on the other, at 5s. currency, affords a basis for the ratio between sterling and currency. A simple calculation shows this ratio to be £90 stg., equivalent to £100 currency. From this was deduced the simple rule that by adding one ninth to sterling we get currency, or by deducting one tenth from currency we get sterling. But, as we have also just seen, on the existing bullion basis the dollar was worth only 4s. 2d. stg. Calculating the equivalents on this basis we find that £100 sterling are equal to £120 currency, and this will be found to be just eight per cent. in currency above the official par of exchange. Hence, when, by the official standard, exchange is at eight per cent. premium, it is just at par by the bullion standard. Thus a bill on London for £100 is, by the official method, figured out as follows. Add eight per cent. premium and we

have £108, then add one ninth, being twelve pounds, to get the value in currency, and we get £120. In interpreting official quotations, therefore, when we find, for instance, exchange on Britain quoted at twelve per cent. premium, it is really only at four per cent. premium, and if quoted at six per cent. premium it is really at two per cent. discount.

Though the Home Government did not disallow the new currency Act, yet it evidently regarded the Provincial Legislature as incapable of dealing correctly with currency and banking matters. Hence the Governor received a despatch from the Colonial Office stating that, as the various colonial regulations with reference to the currency very greatly affected the financial interests of the Home Government and the relations of the colonies to each other, he is required not to assent to any further acts dealing with banking or currency without their first receiving His Majesty's sanction.

When the effects of the Currency Act of 1836 came to be felt the matter was again taken up in the Legislature the following year. In 1837 the Select Committee, to which was referred the subject of the monetary system of the Province, reported that the artificial increase in the value of the specie of the country had produced no beneficial effect, since prices and exchanges had simply adjusted themselves to the new rates. Nothing, apparently, could prevent New York from regulating the exchange between North America and Europe. In his evidence before the committee, the Hon. John Macaulay, agent of the Bank of Upper Canada at Kingston, pointed out that the British shilling and sixpence, as issued by the British mint, were over-valued six per cent. as compared with bullion, and the recent Act had rendered them current in Canada at an advance of twelve and a half per cent. But, while in Britain they were a very limited legal tender, in Canada they were unlimited. Such a condition simply protected the banks at the expense of the people. He is of opinion that an eight per cent. advance on their bullion value would be a reasonable rating, being equivalent to the standard, or official par of exchange. His proposal for a supply of small change, was to convert Spanish dollars, at the mint, into five and ten cent pieces, less a certain seigniorage to insure their remaining in the country.

Owing to the Acts of the Legislature of Upper Canada of 1826, 1830, and 1836 there was at the time of the crisis a very considerable difference between the two Canadian Provinces as to legal tender and the rating of coins. In Lower Canada the French currency was still legal tender, while in Upper Canada it was not. In both Provinces British silver was legal tender, but at quite different rates. In Lower Canada the crown was still rated at 5s. 6d., and the shilling at 1s. 1d., whereas in Upper Canada, after the Act of 1836, they were rated at 6s. and 1s. 3d. respectively. The dollar, however, was rated at 5s. in each Province. But though there was this common factor in both systems, in neither Province was any one compelled to pay in dollars. In Lower Canada payment tended to be made in over-rated French coins, and in Upper Canada in over-rated English shillings. Naturally this variety and uncertainty as to standards added greatly to the difficulties in Canadian exchange during the crisis of 1837-8, as well as afterwards.

In consequence of having in each Province an over-rated coin as legal tender, whichever Province had the balance of exchange in its favour would only accept exchanges on the other at a discount. As a matter of fact the exchange was usually in favour of Lower Canada, owing to Montreal being the basis of supplies for the Upper Province. Thus we find that after the resumption of specie payments exchanges on Upper Canada were regularly at a discount in Montreal. Owing to the same causes exchanges on New York were always at a premium in both Provinces.

In the reply of the Bank of Upper Canada to the message of Governor Arthur, in July 1838, urging the resumption of specie payments, the bank gives among other excuses for declining to do so, the lack of uniformity in the currency standards of the two Provinces. The coinage of the two Provinces, it is urged, should be put upon the same basis, and the French half-crowns abolished, as they are not worth more than from 1s. 10½d. to 2s., while they are legal tender in Lower Canada at 2s. 9d. The copper coinage also should be reformed and a new issue made. Finally, a definite silver coinage for the colonies should be issued.

When representative government was suspended in Lower Canada in consequence of the Rebellion, and the Special Council

was appointed to carry on the affairs of the Province, it was thought to afford an excellent opportunity to get rid of the French coinage as a legal tender. Evidently at the instance of the Bank of Upper Canada, Lieut-Governor Arthur wrote to Sir John Colborne, the Governor-General, on March 9th, 1839, pointing out the hardship occasioned to the Bank of Upper Canada through the circulation of the French crowns and half-crowns. If the Council does not see fit to deprive these coins of their legal tender privilege, it should at least pass an ordinance preventing the Lower Canadian banks from paying these coins to the Upper Canadian banks in settlement of balances due them, since they are not legal tender in Upper Canada. He also deplores the lack of unity in currency standards, and urges the establishment of a special coinage for all the British North America Colonies. In the meantime, he thinks that the new American standard for gold and silver coins should be adopted in both Provinces. Accompanying this despatch is a communication from the Bank of Upper Canada, enforcing most of the Governor's points, and advocating the extension of the provisions of the Currency Act of 1836, to Lower Canada.

Colborne replied to Arthur on March 30th, with accompanying returns, and a statement from the Bank of Montreal, showing that the evils complained of by the Bank of Upper Canada were by no means so great as represented. At the same time it is admitted that the French coins are over-rated, especially the half-crowns, which are the more numerous. They should be gradually redeemed and withdrawn from circulation, but if the Government is not at present prepared to do that, the bank suggests that they be reduced in value from 2s. 9d. to 2s. 6d. On the other hand the bank refers to the over-rated silver coinage of Upper Canada, in the shape of the shillings and sixpences, and suggests that their legal tender be properly limited. The Bank of Montreal is quite in favor of adopting the American standard for gold coins, and of having a special colonial coinage. Its views generally are endorsed by Colborne.

Just at this time steps were being taken by the Special Council to amend the coinage regulations of Lower Canada. On March 30th, 1839, an ordinance was passed to regulate the currency of the Province. In his despatch transmitting this ordin-

ance to the Home Government, Sir John Colborne states that "various causes had conduced to introduce into this Province a curious variety of coins of different nations, some of which were legally rated above their worth, and others had received a conventional rather than a legal value, continually fluctuating, to the great loss and inconvenience of the public. This ordinance assigns a legal currency to certain coins in common use in this Province, proportionate to their intrinsic value, establishes an equivalent currency for certain British coins and calls in others, which are to be received by the collector of Her Majesty's customs during six months, to be then re-coined at the expense of the Province."

About the same time another Act was passed by the Legislature of Upper Canada, "To regulate the value at which gold and silver coins shall pass current within this Province." Of this Act Sir George Arthur, the Lieut.-Governor, says: "It is intended by this measure to equalize the currency of this Province with that of the United States, to enable the banks to use money on the same terms as in that country." He adds that most serious inconveniences have been experienced for want of some such measure, and until a provincial coinage is established he considers the Act necessary to prevent the continual drain upon the specie in the Province which the existing inequality of value was causing. It is also thought to be necessary in order to render foreign coins available for commercial purposes.

In accordance with the Imperial instructions, both measures were reserved for the consideration of the Home Government. In December 1839, Lord John Russell, in a despatch to the newly appointed Governor-General, the Hon. C. Poulett Thomson, states the reasons of the Home Government for declining to assent to either of the measures, and lays down the conditions which must be fulfilled by any measures which will meet the needs of the situation.

In their report on these measures the Lords of the Treasury observe that they gave currency as legal tender to certain foreign coins, as well as to British coins. In the Lower Canadian ordinance, in particular, reference is made to calling in and re-coining such currency as is now legally in circulation but will not meet the requirements of the new ordinance. This, they point

out, is a matter upon which the provincial authorities cannot legislate. The Lords of the Treasury are in perfect sympathy with the efforts of the colonies to improve their currency, and to assimilate it to that of Britain without excluding such foreign coins as may be suitable for their wants. They observe, however, that the ratings of the coins are not in all cases correct, and would tend, if confirmed, to defeat the objects they have in view.

They object also to the variety of the coins to be made legal tender in Upper Canada. Only coins which are of standard quality, well known, and in constant circulation should be admitted to legal tender, while the others should be treated as bullion.

The ordinance of Lower Canada attempts to fix a definite relation between the pound sterling and the pound currency, namely, that the pound sterling should be taken as the equivalent of £1 4s. 4d. currency. The rating given to the various coins mentioned in the ordinance are as follows:

| | £ | s. | d. |
|--|---|----|----|
| British sovereign..... | 1 | 4 | 4 |
| Old eagle of the U. S., weighing 11 dwts. 6 grs | 2 | 13 | 4 |
| New eagle of the U. S., weighing 10 dwts. 18 grs | 2 | 10 | 0 |
| Old Spanish doubloon, Mexican and Columbian doubloon, coined in the years 1826-7-8, of 17 dwts. 9 grs. | 3 | 17 | 8 |
| French 40 franc piece, coined before the present year.. | 1 | 18 | 7 |

These coins, their multiples and subdivisions, being of proportionate weight, are to be legal tender to any amount by tale, so long as they do not lack more than two grains of the weight assigned to them. One halfpenny currency is to be deducted for every quarter grain lacking in weight. In payments above £20 cy. the coins may be paid or received by weight on the following basis;

| | |
|---|------------------|
| U. S. gold coins, minted before July, 1834 | 94s. per oz. |
| U. S. gold coins, minted since that date..... | 93s. per oz. |
| French gold coins | 93s. 1d. per oz. |
| Dobloons | 89s. 5d. per oz. |
| Silver dollars :— | |
| Spanish, U. S., South American, and Mexican silver dollar weighing not less than 17 dwts. 4 grs | 5s. |

These with their subdivisions down to quarter dollars, may be legal tender to any amount by tale. Fractions of the dollar, less than quarters, to be legal tender only to fifty shillings.

| British silver :— | s. | d. |
|-------------------|----|----|
| Crowns | 6 | 0 |
| Half-crowns | 3 | 0 |
| Shilling | 1 | 3 |
| Sixpence | | 7½ |
| Groat | | 5 |

The first two to be legal tender to any amount, the last three only to fifty shillings. The British penny, half-penny, and farthing to pass for the same in Canada, and to be legal tender to one shilling currency.

Now, with reference to the valuation of these coins, the Commissioners of the Treasury make the criticism that the rates for the silver coins are neither consistent with each other, nor with those for the gold coins. The dollar, the crown, and half-crown are under-valued, while the shilling, the six-pence, and the four-pence are over value. The dollar is rated in this ordinance according to the ratio of silver to gold adopted by the United States, which is sixteen to one. But this is about one and a half per cent. below the general market value of silver, which is at present about fifteen and three quarters to one. The framers of the ordinance no doubt feared to rate the gold coins below the United States standard lest they should all pass to the United States. But the Commissioners think this feature might be disregarded, as the currency law of the United States simply makes gold their standard and establishes a premium on silver, so that the exchanges with Canada would not be affected. They cannot, however, understand why the British small coins should be over-valued. Though they are legal tender only to fifty shillings, that limit still allows the banks to import large quantities of them to be employed in all payments up to fifty shillings. They then set forth what the proper ratings for the silver coins should have been, leaving the gold coins rated as in the ordinance.

| | s. | d. |
|------------------|----|----|
| Dollar | 5 | 1 |
| Crown | 6 | 1 |
| Half-crown | 3 | 0½ |
| Shilling | 1 | 2½ |
| Sixpence | | 7½ |
| Groat | | 4½ |

However accurate these valuations might be, one would suppose that the Commissioners could have understood why ratings

somewhat more convenient for reckoning were adopted in the ordinance.

Turning to the Upper Canadian Act of May 11th, 1839, we find that the ratings were as follows :

| | £ | s | d |
|---|---|----|--------|
| Sovereign, 5 dwts. 2 grs | 1 | 4 | 4 |
| United States old gold, 11 dwts. 6 grs..... | 2 | 13 | 3¼ 100 |
| " new gold, 10 dwts. 18 grains..... | 2 | 10 | 0 |
| Doubloon, 17 dwts. 9 grs..... | 3 | 17 | 8¼ 100 |
| French 40 franc pieces, 8 dwts. 7 grs | 1 | 18 | 6¼ 100 |

These rates are evidently taken from a table of foreign coins issued in the United States, in accordance with the Act of June, 1834.

The following are the ratings of the silver coins :

| | s | d |
|---|---|--------|
| Spanish, Mexican, Columbian and United States dollar..... | 5 | 0 |
| British crown | 6 | 0 |
| British half-crown..... | 3 | 0 |
| Shilling | 1 | 3 |
| Sixpence | | 7½ |
| French crown..... | 4 | 8½ 100 |

The shillings and sixpences are not to be legal tender above £10.

To these ratings the Commissioners of the Treasury apply the same criticisms as to those in the Lower Canadian ordinance.

Considering how necessary it was, under the circumstances of Canadian exchange relations, that the basis of the Canadian rating should accord with the American standard, and considering how nearly accurate the new valuations were, as compared with the previous ratings, especially in Lower Canada, there did not seem to be sufficient reason for withholding the royal assent to these measures. However, the motive seems to appear in a Treasury minute of 22nd November, 1839, which indicates a desire on the part of the Home Government to still regulate the currency of Canada in accordance with the British system, and in uniformity with that of the other sections of the Colonial Empire. This minute suggests that the currency of the Canadian Provinces be left to be entirely regulated by the Home Government through the medium of Orders-in-Council and Royal Proclamations, as in the case of the West Indies. Also, that the ratings should be determined with reference to the British pound sterling, and through it to all other coins. Protection from counterfeiting could then be dealt with on the basis of the Imperial laws on the subject.

To this arrangement, however, the Canadian Provinces showed no disposition to assent. The Toronto Board of Trade, at its first meeting after re-organization, in March, 1840, strongly protested against having their money matters governed by general rules applied to all the colonies, without reference to local conditions. But, owing to the measures then under discussion for the re-construction of the political constitution of the Canadas, all legislative action with reference to the currency was suspended. It was understood from his remarks on the subject, that the new Governor General intended, after the union of the Provinces, to bring in a measure calculated to effect a permanent settlement of this important yet difficult matter. The trade of the country was therefore still compelled to submit to the existing evils for a short time.

With the political union of the Canadas their banking and currency relations were greatly altered, as they had now to conform to one system of exchange. Thenceforth the paper and metallic currencies were also more intimately related, both in theory and practice. In entering upon a new period we may therefore treat them together.

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THE PROBABLE EFFECT ON THE COMMERCE AND TRADE OF CANADA OF THE INDUSTRIAL COMBINATIONS BEING FORMED IN THE UNITED STATES

BEING THE ESSAY IN COMPETITION 1 TO WHICH THE FIRST PRIZE
WAS AWARDED

THE age we live in is undoubtedly an age of tremendous achievements. No better instance of this fact can be cited than the promotion, for the most part in recent years, of what are commonly known as "Trusts." The closing years of the nineteenth century, and indeed the commencement of the present one witnessed the formation of numerous gigantic industrial combinations, involving the concentration of colossal capital. It has been stated by eminent authorities on political economy, that before the dawn of the twentieth century, there were, in the United States alone, more than five hundred trusts or combinations, capitalized, roughly speaking, at from six to eight billions of dollars. Almost every article of trade and commerce, whether in the raw or manufactured state, is controlled by these mammoth organizations.

It cannot be denied that the birth of this new era in business enterprise introduced elements fraught with great danger to the financial interests of the community at large. Especially is this true of the United States, but scarcely less so of Canada, for we Canadians have much in common with our neighbours to the south, in spite of the vast gulf of political difference that lies between the two peoples. The reciprocal relations of the two countries are quite obvious; their juxtaposition renders it impossible that it should be otherwise.

The people of Canada may well be amazed when almost every morning's paper brings tidings of yet another combination controlling yet another industry, aiming, as it were, yet another blow at our comparatively infant industries. The danger to our industrial and social welfare seems indeed portentous. Can

these monopolistic institutions, controlling, with the exception possibly of agricultural products, all that is necessary for the use of man, demand from us, for their wares, what price they will? Can they, as the only employers of labour, place what value they will upon a man's toil? Will they, with their facilities for purchasing, manufacturing, transporting and disposing, render the competition of Canadian merchants futile and impossible? Do they not block the road to the goal of business success for the many?

It may be well at the outset, before discussing in detail the resultant effects which are likely to fall upon our commerce and trade, to enquire into the causes which gave rise to the first industrial combination on this continent.

When English pioneers first pushed their way into the wilds of North America, they were essentially self-contained. The soil yielded abundantly. The rivers and lakes swarmed with fish, and the chase was an important factor in supplying their primitive wants. Gradually the land was wrested from the Red Man. Forests gave place to cultivated lands and ordered farms, and with increasing prosperity came the power to gratify the claims of a higher degree of civilization, and importations met needs that but half a century before would have been deemed luxuries. These America received in exchange for her furs, grain, timber, tobacco and cotton. As time went on the cost of transportation was saved by the introduction of manufactures, which were undertaken at first by individuals in quantities that hand labour rendered possible, sufficient, however, to supply the local markets. It was not until after the motive power of steam had been discovered by Watt and applied to the propulsion of machinery; it was not until after the many ingenious devices and appliances for self-acting engines had been perfected, nor until the stage coach had been superseded by the locomotive, that the individual trader and manufacturer began to realize the necessity of concentrating capital to utilize these wonderful discoveries. Partnerships were first formed, which in turn gave place to joint-stock companies, organized practically on the basis of a partnership, each shareholder being held personally responsible to the full extent of his property for the liabilities of the company. The well-known principle of limited liability, introduced into Great

Britain by Act of Parliament in 1855, and afterwards into this continent, gave the greatest impetus to financial and commercial expansion yet felt. Liable now only for the amount of his subscription, a man might be a shareholder in ten different companies with slight risk comparatively, and so factories soon sprung up in every town and district, and over-production, always a cause of undue competition, became an evil of the time.

In competition the key-note of the situation is struck. It is the greatest cause of the industrial combinations of the present day. The cry of the general public, the consumer, is ever for cheaper goods, and in endeavouring to meet this demand and to keep factories running to their full capacity in bad seasons as well as good, overproduction is inevitable. Accumulating stocks must be disposed of at whatever sacrifice. Travellers must undersell their rivals if they would secure orders for their firms, and a war of rates is the certain result. To this there can be but one ending, "the survival of the fittest." The weakest are pushed to the wall. Bankruptcy is their portion, while the larger, richer organizations have to face enormous diminutions in profits if not actual loss. Such a situation could not fail to suggest an application of the maxim, "United we stand, divided we fall." Parkman, the noted historian, gives a forcible illustration of this principle in one of his works. During the Seven Years War it was proposed to divide the troops on a certain occasion. Hendrick, the sagacious chief of the Mohawks, voiced his dissent, and picking up a stick broke it across his knee; then he picked up several sticks and showed that together they could not be broken. Undoubtedly in union lies strength.

Recognizing the truth of this, in 1882 the principal oil refiners in the United States conceived the brilliant idea of overcoming the wastes of production and competition by transferring the stocks of the several companies to trustees selected from amongst their managers and directors, thus practically vesting the several interests in one organization, while no one member of it lost his individuality. So arose the first octopus, the plan of formation giving origin to the term "trust," which while to-day generally accepted as synonymous with "industrial combination" did not then by any means convey the same idea. The scheme, however, savoured too much of an attempted

monopoly to be popular with Anglo-Saxons, and as mercantile men were not slow to follow so striking an example, the machinery of legislation was set in motion and laid a heavy hand upon such aggregations. Trusts proper became a thing of the past, yet in their place rose the gigantic combinations of the present day, the smaller companies having been bought by, or merged in, the larger—a much more difficult form of organization to cope with legislatively.

In spite of the alarming fears first felt, generated no doubt by the magnitude and apparently limitless possibilities of the trusts for evil, it is quite probable that their effect upon the commerce and trade of Canada may not be so injurious as was at first imagined. To hear to-day of another combination formed is no novelty to Canadians, no matter how boundless the range or infinite the detail. Recent years have shown to some extent their effect upon the commerce and trade of the United States. What will be the effect upon our own must be deduced from the precedents established applied to our own trade conditions, because, as has been mentioned before, Canada's commercial relations with the United States are very close. Reciprocal treaties which facilitated the exchange of commodities between the two countries, to their mutual advantage have not been unknown, and even to-day such matters have become diplomatic issues engaging the attention of statesmen

The probable effects upon our commerce and trade must be considered from every standpoint, for there is no class or phase of society that is not affected by the ramifications of trade. A rough subdivision will lead to a more logical treatment of the subject. Let us consider then the possible effects upon :

1. The consumer.
2. The manufacturer.
3. The wage-earner.
4. The farmer.

The standpoint of the consumer undoubtedly merits attention first, for he embraces all other classes. In supplying daily wants, no matter upon what scale, each member of the community is of necessity a consumer. It is a well-known fact that Canadians are large purchasers of American manufactured goods.

On referring to the statistical year book of Canada published by the Dominion Government, it will be found that in the year 1899, for example, importations to the value of, in round figures, \$102,000,000 were received from the United States, while Great Britain, her only important rival in our market, exported to us very little more than one-third of this amount. The fact that a large proportion of the value of the former was represented by manufactured articles goes plainly to show that Canadians will of necessity be large purchasers from American combinations. The answer to the burning question, How do industrial combinations affect prices? will naturally mainly decide the effects upon the consumer.

Opinions upon this point have been most conflicting. Supporters of combinations claim that their tendency has been to reduce prices on account of the great savings in production and administration, while anti-trust associations eagerly advance theories to the contrary, basing their views on the fact that a monopoly is necessarily obtained by a federation of all the manufacturers or dealers in any one line. Both arguments are well founded, for in so far as a trust is enabled to save by commanding the market, by abolishing the wastes of competition and by economizing in production, in a corresponding ratio can the price of the finished article be reduced, or, on the other hand, the savings effected by these means may be divided amongst their shareholders and their wage-earners at will, in which event society in general receives little benefit from their economies.

There is, however, little danger of any combination demanding to any undue extent unfair prices for their goods, being hindered by the knowledge that capital, ever on the watch for opportunity of profitable investment, would seek to divide with it the inordinate profits. No better proof of this fact can be given than the case of the sugar refiners of the United States. Shortly after their organization in 1887 the marginal difference between the price of raw and refined sugars, which is the refiner's profit, steadily increased. So tempting were the profits realized that Claud Spreckels entered the field, establishing refineries upon a large scale, after which the price of refined sugar gradually fell until he was included in the combination, then the price as gradually rose again, and with a like result, for Doscher and the

Arbuckle Bros. commenced operations, and were instrumental in keeping the price, for a time, at a fair figure. This was in 1898; since then the price of refined sugar has risen nearly one cent a pound, from which fact it is reasonable to suppose that some arrangement has been effected to put up the price. At the present moment the American Sugar Co. has another powerful rival to contend with, namely the beet sugar interest. The Canadian Journal of Commerce, a Montreal publication, in dealing with the present cut in sugar prices in the United States, writes: "And now in the war with the beet sugar interest, prices have become utterly demoralized, to the temporary advantage of the consumer and the lasting demonstration of the fact that no monopoly can be successfully maintained in the manufacture of an article whose source of supply is practically unlimited."

There need be little apprehension then, that we shall have more to pay for goods manufactured by trusts than we did for goods manufactured by individual firms. There is no monopoly of capital. Mobile as water, restless as the waves, it is always seeking investment, and so sure as any trust becomes exorbitant in its prices, so sure will a competitor of sufficient strength enter the field. If the American Sugar Co., with a capitalization of about \$75,000,000, can be combated successfully, fears need never be entertained of any trust passing beyond the pale of competition. Not even the Standard Oil Co. can boast of having obtained a complete monopoly. Is the present reasonable price of oil due to the slight competition still maintained against that organization? The answer must be a decided negative, for we might almost expect an increase in prices to-morrow, were it not for the fear of other rivals entering the field equipped on a scale that would enable them to compete successfully. This dread of potential competition is the greatest factor in securing to the consumer his fair share of the increased profits derived from the new system. Up to the present time most of these have undoubtedly found their way into the pockets of the shareholders.

Passing now from the interests of the consumer to those of the manufacturer, the most important questions to present themselves are: Can the Canadian manufacturer hope to place his goods upon the market at as low a figure as the American combinations? Will it be possible for him to compete with them suc-

cessfully? Compete he must, for in spite of our tariff being essentially protective, save for the recent discriminations in favour of British goods, the trade-marks of American firms are as familiar to Canadians as that bugbear label "Made in Germany" is to Englishmen. The antecedent reference to our trade returns clearly proves this fact. It is a question open to argument whether it would not be better to throw open our market to all, after, of course, providing for a revenue, thus placing all producers on an equal footing, and giving the consumer an opportunity of supplying his wants in the cheapest manner. It has been feared, however, that this would be too great a handicap to many of our growing industries whose welfare tends greatly to the future development of Canada.

Perhaps the most important point to note in this connection is the readiness with which the Canadian manufacturers have practised imitation, called in an old adage the sincerest form of flattery. Quick to perceive the immense economic advantages and the necessity of keeping abreast of the times, they too have formed their industrial combinations, not of course to be compared with the sister organizations across the line, but sufficient in capitalization and scope for the commercial conditions of the country in which they are intended to operate. For instance, the Canada Cycle and Motor Co., Limited., incorporated quite recently, comparatively speaking, included every important manufacturer of high-grade bicycles in the Dominion. The Canada Furniture Manufacturers, Limited, is also an instance of an amalgamation comprising almost all the principal firms in that line. Each factory of importance is enabled to specialize, nothing is duplicated, in short the same economy is practised here that is found in any American trust. The Canadian General Electric Co., Limited, recently absorbed a large Montreal institution, and not long after the more important firms interested in the salt industry sought the advantages of combination. The Massey-Harris Co., Limited, may be cited as another and older example of industrial combination, although it can scarcely be classed as one owing its origin to the effect of American influence. In this firm, which was founded by Daniel Massey, who commenced operations in 1847 on a very small scale indeed, have been merged or associated a number of leading implement makers,

and though not completely controlling the sale of agricultural implements, there is practically no firm in Canada that can compete with them. Again, the purchase of the Bank of British Columbia by the Canadian Bank of Commerce effected a combination, which, though of course not industrial, has a direct bearing in this connection, for upon the successful management of our financial institutions depends, to a great extent, our commercial welfare. Some of our cities have witnessed the formation of ice, and even milk trusts; in short, industrial combination in Canada is no longer a possibility but an accomplished fact, and may be justly ascribed as a result of American influence and example.

It is certain that more will follow in the future. Quite recently rumours were current regarding the contemplated combination of the stove and range founders. Several firms engaged in broom and brush making have arranged to join forces under the title of the United Factories, Limited; in fact, manufacturers in almost every line have been considering the advisability of consolidation. In this manner the competition of American Trusts may be met upon their own ground and with their own weapons. With regard to the decision arrived at as to the effect upon prices, it may also be concluded that Canadian concerns organized in this manner, with the present protection afforded by the tariff, will at least be able to retain their share of the home market, and, with the natural resources of the country, probably their share in the foreign market also. For example, though the United States Steel Corporation, an amalgamation of the well-known Carnegie Co. and several concerns of kindred character, capitalized at about \$1,100,000,000, seriously threatens our trade in this line, it is a fact worthy of note that the Dominion Iron and Steel Co. of Sydney can produce as cheaply, if not more so, than its great American rival, for both iron ore and coal in almost unlimited quantities are in close proximity to their plant, and possessing shipping facilities of the highest order, freight charges are almost eliminated from the cost of production. Shipments have already been made to the Eastern States from this vantage ground, and thus are we enabled to place our product upon the American market at a price to compete with the American trust. Sir Christopher Furness, head of a large English shipping firm,

after visiting these works, stated that he was convinced steel could be manufactured there more cheaply than in England. Although the demand in Canada is strong enough at present to render the exploiting of the foreign market unnecessary, it is certainly a matter for congratulation that when the time to take advantage of it comes, the field is open.

Many other instances might easily be given of Canadian companies which have been able to hold their own in spite of the strenuous competition of American combinations. Let one more suffice. The Canadian sugar refineries,—the Redpath, the Acadia and the St. Lawrence,—by a close connection with the distributors, have been able to almost exclude American goods, which are handled only by the smaller wholesale firms or used in the manufacture of confectionery.

Referring once more to the strides made in Canada in regard to industrial combination, a word in passing in connection with one of its most salient features, the offering of industrial securities for public subscription. The promoters of Canadian combinations, following closely on the lines of their forerunners, the promoters of the American prototypes, have almost invariably offered large blocks of both common and preferred stock to the general public. Here lies a great and dangerous rock, the rock of over-capitalization upon which many a concern apparently launched successfully, and with everything pointing to a profitable future, has been hopelessly wrecked. The large amount of stock given as the share of the promoter, and the bonuses in common stock apportioned to the several contracting concerns as an inducement to enter into the combination, too often render it impossible to base the capitalization upon the values of the properties. After witnessing the manipulation displayed in the financing of trusts in the United States, the Canadian investor would do well to consider carefully before subscribing for any industrial stock that may be floated. During August and September of 1901, there appeared in the neighbourhood of fifteen annual or semi-annual reports of American trusts, only two of which could be deemed really satisfactory—those of the United States Steel Corporation and The Colorado Fuel and Iron Co. Of the others, some were able to pay dividends upon preferred stock, while some showed absolute deficits.

Notwithstanding the attendant evils, a trust properly administered may be regarded as having a beneficial, rather than a detrimental effect upon any community.

Turning from the discussion of the interests of the manufacturer, the transition to those of the wage-earner is natural and easy. The two topics are indeed closely allied, for upon the success of the manufacturer depends altogether the welfare of the employee. The agitation which is to-day raised against trusts is usually instigated by the large armies of wage-earners. It too often breaks forth without mature consideration. Glancing over the pages of history many parallels will be found; for a public benefit is by no means always at first perceived. When William Caxton introduced the printing press into England in the reign of Edward IV. he met with violent opposition, and, towards the latter part of the eighteenth century, when the labour-saving inventions of Hargreaves, Crompton and Arkwright revolutionized cotton-spinning, mobs of hand-spinners, who saw their livelihood threatened, tramped through the land destroying the machines. Cartwright's invention of the power-loom met at first a similar fate at the hands of the weavers. It is unquestionable that all these inventions temporally displaced labour. The hand-press in the fullness of time gradually developed into the modern machine-press, which, relegated the old news-letter to oblivion and made the complete paper of to-day possible. The few displaced pressmen were replaced by thousands of printers and journalists whose services would have been unnecessary under the old regime. Similarly the inventions of Hargreaves and Cartwright developed the industries in the furtherance of which their mechanical genius had been exercised, to such an extent that almost before a generation had passed more labourers were in demand than ever before.

From kindred causes an industrial combination cannot be formed without throwing out of employment, at the commencement at any rate, a number of workers, and no man should be expected to fold his hands peacefully while watching his bread snatched, as it were, out of his mouth. For instance, it is estimated that the consolidation of the interests of the sugar refiners necessitating the shutting down of fully seven plants, threw upwards of six thousand men out of employment. These

facts present our own combinations in a new phase, at the same time resurrecting the time-honoured question of displaced labor.

In the contingency of certain of our manufacturing industries falling before their more powerful American rivals, or others practising the advantages of combination, which enables them to continue with a diminished number of workers, it may be well to consider what can be done for the victims of industrial progress. A bitter lot awaits the skilled workers in various lines who have grown grey in the service of their employers. How can they begin life anew? W. M. Collier, a leading American authority, in his valuable work upon trusts, suggests the advisability, while fearing the practicability, of pensioning these veterans of trade who are incapable of adapting themselves to new conditions. In Canada there is an abundant field for every employee other than of this class. Agriculture in our great North-West offers an opening to all. Men who have actually had their fares paid from the older provinces are now known to hold unencumbered farms yielding to them and their families a liberal subsistence never dreamt of in their former mechanical life.

Apart from the fact that the expansion of industrial combination necessitates dispensing with the services of numbers of labourers, the wage-earner has another and more serious danger to face, the power of the trust to control wages. It has been a source of fear to this class, that when trusts should obtain control of industries there would be but one employer of each class of labour. While this is perfectly true, a trust cannot afford to encourage dissatisfaction amongst its employees. A far-reaching strike, which the labour organizations of the present day render possible, besides causing great pecuniary loss through the suspension of numerous plants, would do much to revive competition, a possibility against which they constantly strive to guard. A trust can well afford to pay good wages, a cheap concession for a thorough understanding with its employees. As a matter of fact, the tendency of the trust has been to increase wages. At the Chicago Trust Conference the Secretary of the Illinois Bureau of Labour Statistics, in the course of his address, said:—

“Great organizations have been formed for carrying on the growing business of the country. During this period the wages

of workmen have increased and the hours of labour shortened."

"The oil and railroad interests of the country have been singularly free from labour disturbances. As a matter of recent history, our most serious conflicts have been with interests that neglected to federate. Labour leaders will agree that better terms of employment can, as a rule, be obtained from large than from small employers. Why, then, should we fear the results of consolidation? It is the part of reason to encourage a tendency that will make possible higher wages, lower prices and shorter hours of labour."

Lastly, let us glance at the effect of industrial combination upon the Canadian farmer. Agriculturists in Canada are sufficiently numerous to justify special attention to their position with regard to trusts. According to a statement made by the Hon. Dr. Montague in the House at Ottawa, there are in the neighbourhood of 416,600 men in the Dominion whose vocation is farming. Considering the number of dependents there are on the majority of these, they and their families form no small proportion of the population of the Dominion.

The farmer has watched the growth of industrial combination in the United States with great trepidation. Unlike the manufacturer or wage-earner, he has great difficulty in protecting himself from encroachments upon his rights. To him federation or union is alike impossible, for the vast territory over which agriculturists are scattered renders organization scarcely feasible. They are the producers of raw material, and as separate units of an important class they must place their produce upon the market. Wheat is grown for the most part, though oats, barley, rye, corn, vegetables and fruit are cultivated extensively in certain districts. So much for the products of the soil—the dairy furnishes both butter and cheese and the stock-yard pork, beef, mutton and poultry. So far as the staple product, wheat, is concerned, the farmer has little to fear from trusts. So little capital is required to establish the ordinary mill, found in almost every district where cereals are grown, that the possibility of an extensive federation of the milling interests is scarcely probable.

The farmer's great safeguard lies in the fact that it is almost impossible to control the supply of a staple product whose source is practically unlimited. The frequent failures of attempted

corners in wheat and the like afford ample evidence to support this theory. It is in staple articles that the Canadian farmer is chiefly interested. Unlike the American agriculturists he produces little else but food products. Cotton is not cultivated in Canada, nor is tobacco to any great extent. The farmer then need have no fear of the trust obtaining the power of lowering the price of his produce, or acquiring a controlling interest as a purchaser.

The farmer views trusts not only in the light of a probable purchaser, but as the producer of the requisites to the cultivating of his farm and the comfort of his home. Now-a-days he is not self-contained as in the olden times. It is more economical for him to purchase his agricultural implements, clothing and other necessities than to plough or mow a field with some crude old-fashioned instrument extemporized by his forefathers, or weave his homespun clothing. The farmer forms an important and numerous class in the great body of consumers, and so he has a double interest in the expansion of industrial combination.

The most natural manner in which to consider a great economic question is for each man to reflect upon the probable results to his own particular occupation. It has been shown that industrial combination in the United States brings with it, on account of the economy practised in production, lower prices to Canadian consumers, prices which should tend year by year towards further reduction; that the Canadian manufacturer, quick to benefit by the examples of audacious business enterprise set by Americans, is not to be denied an existence by apparently overwhelming interests; that the middle-class, the wage-earners, will not be down-trodden in the path of industrial progress nor the interests of the farmer injured.

Most important of all is the tendency in Canada to adopt the American system of industrial combination; the future alone can show to what extent. That it will materially assist in the development of Canada has been shown, provided the trusts are compelled to serve the people in place of having a free hand to prey upon them. The remedy for such evils as may crop to the surface will be in the hands of the legislature. The inauguration of all great reforms, political or industrial, has always been

heralded by violent opposition. Cobden's trade reforms were not introduced into Great Britain without a supreme effort. If Canada is to take the place amongst the manufacturing countries of the globe, to which she is entitled by virtue of her natural resources and the ability of her sons, it can only be by means of this economical form of industrial production. With increasing commercial prosperity will the power come to the people "to rise superior to their present condition."

May the Land of the Maple ever be the brightest jewel in the British crown.

C. E. H. MORTON

MERCHANTS BANK OF CANADA

THE PROBABLE EFFECT OF THE SOUTH AFRICAN WAR UPON THE COLONIES OF THE BRITISH EMPIRE

BEING THE ESSAY IN COMPETITION II TO WHICH THE FIRST PRIZE
WAS AWARDED

PROBABLY the most notable result of the late war has been the demonstration of the solidity of the British Empire. England herself was surprised and her enemies dumbfounded at the hearty, unforced, support given her by the colonies, and it has been proven beyond a doubt that the settlements formed by Englishmen the world over have not grown to be a number of separate nations with nothing in common, but are as ready to thrill with a single emotion, or to act in unison against a common enemy, as the several States of the Union. The sending of the contingents was regarded in the colonies and received in England as the beginning of a new era. It was the initiation of a policy of active co-operation, and has awakened a fresh interest in the question whether a more exact definition shall not be given to the rights and responsibilities of the colonies in connection with the government and defence of the Empire, or in other words what we vaguely term the question of Imperialism. In discussing the strengthening of the National feeling in favour of Imperial Federation during the past two years, and the probable future developments along that line, it may simplify matters to consider the subject under three headings, Military, Political and Commercial.

MILITARY

English Imperialists have been working for years to bring about Imperial co-operation in defence, but while the colonies have all along been strongly British in inclination, no definite policy of participation in questions of Imperial interest had been formulated. The mass of the people, while willing to admit the unfairness of the arrangement by which we enjoyed the full protection of Britain's army and navy although giving nothing in

return, were not yet ready to grapple with the question of finding a remedy. At times they had thought of it, but the dangers that are so real to statesmen in the United Kingdom are not so real to us. Some day we intended to take up the question seriously, but that day had not come. In the sense in which European nations know militarism there is no such in the colonies. There has been a reasonable amount of military training, but those who volunteer do so for the congeniality of the surroundings and not to be prepared against crises that are always threatening. By opening the eyes of the colonies to the great need of a scheme of Imperial co-operative defence, and the possibility of its working smoothly, the war has given an impetus to the movement that years of peace could never have done. As early as March 6th, 1900, we have a resolution passed by the Montreal Board of Trade declaring in favour of united action throughout the Empire, to promote its strength, progress and permanent solidity, and proposing that the colonies should contribute towards the naval and military defence of the Empire. With this proposal every fair-minded man must agree. The practical question is—what form shall the contribution take? It is doubtful if any of the colonies are in a position at present to bear the cost of a standing army of any considerable size, nor is it necessary that they should do so. If we are to believe such historians as Dr. Conan Doyle, "the highly trained soldier has to a great extent ceased to be the all-important factor in modern war, but the strength of the Empire must lie in a large and efficient body of volunteers, not highly drilled, perhaps, but well skilled in accurate shooting and the art of taking cover." For such a body the colonies can furnish abundant material. The presence of a number of men who have had some experience of actual warfare should have a marked effect upon our various bodies of militia, which are sure to be increased and improved. In Australia one of the first measures passed by the Federal House of Representatives of the newly created Commonwealth was one regarding military defence. The bill provides that all the male population between the ages of eighteen and sixty shall be liable to military service for the defence of the country. The proposition is that, except in times of emergency, the defence force shall be kept up by voluntary enlistment and presumably, public sentiment is relied upon to

secure universal training in volunteer regiments. The Governor General is to have power to call out any part of the defence force for active service anywhere within the Commonwealth in case of emergency ; but while the permanent forces will be liable in case of need to serve the Empire outside the Commonwealth, the citizen forces cannot be called upon unless they volunteer for such service. In commenting upon its cabled account of the first Federal ministry, the *London Times* says : " The Bill deals in a thoroughgoing manner with the organization of the people for defence without laying upon them any excessive burden. The practical working of such a measure will be watched with great interest. Should it prove as successful as we fully anticipate that Australian public spirit will make it, the new Commonwealth will give an object lesson which may have considerable effect in other portions of the Empire." It is probable that before very long we shall have a bill upon this pattern passed by the Parliaments of all the large self-governing colonies as a foundation for a scheme of Imperial co-operation, the main consideration in each, however, being home defence. There remains the important question " Are the colonial contingents to continue to be voluntary offerings always?" This was touched upon by Mr. Chamberlain in his speech at the Dominion Day Banquet in London when he said, " I do not know whether we are always to rely upon this spontaneous energy or whether some more complete organization may be evolved from the experience of the war. Sir Wilfred Laurier is reported to have said that if we look forward to a closer union in which the colonies should recognize with us these common obligations as a matter almost of legal responsibility—that if we wanted their help—we must call them to our councils." Here undoubtedly lies the main difficulty to prevent the colonies from agreeing to supply a fixed number of troops for foreign service. With his patriotism undiminished, the colonial still hesitates before agreeing to furnish troops about whose disposal he has no voice whatever, and in the light of recent experience it is a question whether the interests of Imperial defence may not be better served by the spontaneous action of the colonies than by a formal and binding contract.

Turning to the other branch of the national defence, are we, without directly contributing to its efficiency or maintenance, to continue to rely upon the British navy as the sole protector of our coasts and shipping? Obviously it is a most one-sided arrangement. That Canada and Australia will eventually be expected to materially aid in protecting the naval bases of supply in the Pacific and the Atlantic, and to have forces which may be called upon at short notice to act with the navy, is well within the range of our Imperial responsibilities. The movement at present under way to establish a naval reserve among the fishermen of Newfoundland by having a training ship permanently stationed in Placentia Bay, is a step in the right direction, and will be watched with interest. A good example is set the other colonies by the Australian Government in the Defence Bill recently passed, which provides for an expenditure of £1,000,000 a year on the navy. Thus the question of colonial defence tends to settle itself according to the ideas and necessities of each colony.

POLITICS

In the field of politics the results have been no less marked. The welding together of the distinct and distant parts of the British Empire has been in progress for generations, but it might be almost safe to say, that during the past two years that operation has had a greater and more lasting effect than during almost the whole of the period preceding. Common dangers, common suffering, and common sorrow in the struggle for a common cause, have, it is thought by many, laid the foundation of an Imperial Constitution. The Hon. Mr. Tarte and the Duke of Devonshire are racially and by mental build and habit, opposites; yet both declared recently at the same meeting in London, that "the time is not far distant when the Canadian will be as full-fledged a citizen of the Empire as the Englishman," and that "nothing but criminal neglect or apathy on our part can prevent the influences tending to unity from resulting at no distant date, in the political as well as the social Federation and Unity of the Empire." But still more significant were the words of Mr. Joseph Chamberlain, British Colonial Secretary, at the Dominion Day banquet in London: "If the colonies desire this closer connection,

if they are willing to assist us, not only with their arms but with their council and advice, I believe there is nothing that the people of this country will more readily welcome." The difficulties in the way of forming an Imperial Parliament would be great however. It would not be well suited to deal with local questions, and there would, therefore, still have to be a separate parliament for each colony as at present, and the additional expense met of another for dealing with purely Imperial affairs, or if to avoid this the colonies were allowed representatives in the British Parliament, the question of "representation without taxation" would be raised, and although the colonies are willing to provide some share of the cost of the Empire's defence, they would prefer to themselves decide what form it shall take rather than that taxes should be levied on them by a British or an Imperial Parliament. But while the creation of a definite corporate union of autonomous parts acting from a common centre, presents difficulties so great that it is perhaps unwise at the present time even to regard it as desirable, the events of the past two years have shown us that without going to that length there are many points on which our political relations with the old country might be improved. In Canada for instance, the manner in which the agitation for the sending of the contingents was conducted resulted in making the race cry once more prominent in politics and there was danger of a serious division between the two sections of the people. The lack of a centre of responsibility in such affairs is one of the reasons for these unfortunate developments. To no one agency has been definitely assigned the management of Canada's external activities—at least in the important respect of participation in Imperial wars. If the colonies intend to take part in Imperial wars, they must, for their own good, be consulted at an earlier stage in the negotiations that may lead up to war, or they must establish a better system for independent deliberation. The best solution of the question it seems to me, is that proposed by W. Sanford Evans in his admirable book "The Canadian Contingents and Canadian Imperialism." He suggests that there should be created in Canada and in each of the other self-governing colonies a Ministry of Imperial and foreign affairs. "The advantage of placing a distinct and important class of public interests under a single responsible head need not be

enlarged upon. A minister upon whom responsibility has been fixed must have a policy, must find something to stand upon. He cannot avoid laying down a policy, as the Canadian Government did over the South African contingents, because he would have no one else upon whom to lay the responsibility. This minister would keep thoroughly posted on Imperial and foreign affairs, and would be ready for issues before they arose. To have some one man whose business it was to keep thus posted would alone commend the scheme to acceptance. The portfolio might be held co-jointly with another, and the colonial premiers would probably be the most suitable ministers of foreign and Imperial affairs. Although it may be said they already practically fill this position, it would still be advisable to name and definitely locate this part of their functions. A scheme could be devised by which these ministers, together with the Premier, Minister of Foreign Affairs, and Colonial Secretary of the Mother Country could meet at stated intervals and sit as a Council of the Empire. It would be the best kind of a council because it could really settle things, as each member would be a responsible minister, best because it would be least complicated and least expensive, best because its meetings could be in secret. Except in the case of responsible ministers it is repugnant to British institutions that public business should be secretly conducted. If there were any joint parliament or representative Council constituted otherwise than as above, its meetings would have to be as open as are the meetings of Parliament to-day. This would mean that the more serious questions would never come before it, because secrecy is so often essential to safety or success."

Whether Mr. Evans' suggestion will be followed out, of course time alone will tell, but certainly public feeling in the colonies is strongly in favour of more active participation in Imperial affairs, and some such scheme will be necessary.

COMMERCIAL

We now come to the question of the feasibility of preferential trade within the Empire, which has been so much discussed of late, and about which such widely different opinions are held.

As in the other cases mentioned above, this question may have had its birth at some time previous to the war, but it is the National sentiment engendered by the war that has given such popularity to the movement that it has become an important issue in Colonial and British politics. In Canada it has been adopted as an essential part of the policy of the Conservative party, whose leader, speaking on March 19th, 1901, declared that they would never rest satisfied until, in compensation for the Canadian preferential tariff we had obtained a preference in British markets. That such a preference would be of great practical value to the colonies is beyond question; that it could be arranged without prejudice to Great Britain's foreign trade is doubtful however, as foreign countries would be quick to retaliate for any discrimination against them. There have been two debates in the British House of Commons in the recent discussion on the budget in which the claims of the colonies to preferential treatment by the Mother country were set forth. In the case of tea coming from British possessions a reduction of 25 per cent. of the regular duty was proposed, and on sugar 33 $\frac{1}{3}$ per cent. But the Chancellor of the Exchequer, Sir Michael Hicks-Beach, informed the movers that he had no intention of embarking on such a policy. It would deprive the Exchequer of revenue, he said, without benefiting the consumer, who would certainly have to pay as much for colonial sugar paying 2s. 3d. duty as for foreign sugar paying the full duty. If preferential trade with the colonies were established, which he supposed would be by mutual concessions, foreign countries would then make similar offers for reciprocal treatment, and what would be the answer? If Great Britain refused to other countries the treatment which she gave to her colonies she would risk the loss of her foreign export trade which is double that to the Colonies. If on the other hand, she agreed, then preferential trade within the Empire would disappear. Such a statement coming from a man holding the responsible position of Chancellor of the Exchequer must have great weight, but his decision need not be final, and it is a fact that Imperial preferential trade continues to be preached by quite a large section of the British press, and that meetings are continually being held throughout the United Kingdom advocating such a policy. It will be a hard task, however, to overcome the

natural conservatism of the English public, who in the main are still firmly attached to free trade in spite of the fact that "Germany, France, Russia, and other countries show their gratitude to Britain for maintaining a system of free imports without reciprocity by increasing their duties almost every year and putting greater difficulties in the way of her trade." (Sir H. Vincent, speech during debate on sugar duty, June 20th, 1901). About the only example of a preferential tariff on goods manufactured within the British Empire to which we can turn to obtain some idea of the probable result of the measure if it were adopted by Great Britain and all her colonies is the rebate of 33 $\frac{1}{3}$ % of duties, now granted by Canada on imports from the other parts of the British Empire. The Chancellor of the Exchequer stated that this preference had not been of any great advantage to British trade for the simple reason that the preference still left a protective duty as against the British manufacturer in favour of the Canadian manufacturer, and although British trade with Canada had largely increased, the trade of the United States with Canada had also largely increased. But while this may be true, the figures for the first few years in which the preferential tariff was in force are not absolutely reliable as indicators of the effect of that tariff. Merchants on both sides of the Atlantic, and in this country and the States, have such financial relations as commit them to each other as buyers and sellers for a length of time even when such conditions arise as render it desirable for the connection to cease or be modified. Buyers in Canada and sellers in Great Britain cannot be suddenly brought into contact like persons going in and out of a store. British producers are not yet familiar with the Canadian market and to adapt goods for the tastes and needs of this country is a work of time. Such conditions as these have prevented the preferential tariff being effective as quickly as some thought it would.

In Australia the tariff policy of the new Federal Parliament appears to be decidedly protectionist, and this notwithstanding the fact that from its isolated position it should have little to fear from outside competition in supplying the home market. This leads us to hope that later on they may be favourably disposed towards a policy of Imperial preferential trade.

In South Africa itself, public feeling appears to be decidedly

in favour of such a policy. Mr. Jas. Cummings, the Canadian Trade Commissioner there, in one of his reports states that "the mercantile classes of Natal will give Canadian, as they now give Australian, goods the preference over those of any foreign country, and in my interviews with many of their legislators I found a strong desire expressed, publicly and privately, that when a new customs arrangement is made for South Africa, the example of Canada will be followed, and that Great Britain and the sister colonies should have preferential trade advantages over the foreigner, and thus gradually bring about Imperial Federation."

With the larger colonies all apparently favourable to such an arrangement the question remains—can a majority of the people of Britain itself be won over? In time perhaps.

The immediate results of the war upon the industrial development of the colonies have not been entirely favourable. The tremendous expense entailed by two years of active operations has had a marked effect upon the English money market. This is evidenced by the decline in the price of consols, which in 1899 sold as high as 111½, but in two years have dropped to the present quotation at about 90. All this means that the war expenditures have absorbed a very large amount of English capital, much of which would otherwise have been available for investment in the colonies. In our present undeveloped state, when we have to depend so largely upon foreign, and especially British capital for the development of our immense natural resources, this loss will be felt keenly.

On the other hand, the establishing of British rule in the Transvaal, and the abolition of the corrupt monopoly system in force under the Kruger Government, has thrown that great market open to the commerce of the world. The country will not be able to feed itself for years, and gold to buy is plentiful. Here is an opportunity for Canada and Australia, and from all available reports it is being taken full advantage of by our exporters. Australia has for some years done a considerable business with the older South African colonies in cattle, frozen meat, butter, cheese, apples, potatoes, maize, and canned goods, and this trade will now extend to the Transvaal and the Orange River Colony.

The Canadian trade with South Africa is small but is increasing. The Canadian Customs Department give the figures for imports and exports from and to South Africa for the last three years, as follows :

| | Imports. | Exports. |
|------------------------|-----------|------------|
| Fiscal year 1899 | \$ 98,912 | \$ 222,473 |
| “ “ 1900..... | 87,905 | 1,204,365 |
| “ “ 1901..... | 90,695 | 1,086,965 |

A large amount of this, of course, is for supplies for the army, but other lines of goods are being shipped in considerable quantities, and there is likely to be steady progress from now on, especially if we could obtain direct steamship communication.

To sum up, then, the probable results of the war as regards the colonies are these: Increased national spirit and public confidence caused by our now having a military reputation and traditions of our own; greater efficiency of our militia forces and provision made for active co-operation in the defence of the Empire.

Politically, the results will be along the same line. An increased tendency towards Imperial unity, the creation of the political machinery necessary to handle future military contributions, and the entrance of questions of Imperial policy into the colonial parliaments for discussion, either by the creation of a ministry of Imperial affairs as suggested, or otherwise.

Commercially we shall have increased trade with South Africa, with Great Britain, and among the older colonies, and eventually, I think, Imperial preferential trade within the Empire.

S. C. NORSWORTHY

BANK OF MONTREAL

THE LIVERPOOL BANK FRAUDS*

AT Bow Street Police Court, on December 9, before Mr. Fenwick, Richard Burge, pugilist, of Brixton, and Thomas Francis Kelly, a Bradford bookmaker, were charged on remand with feloniously uttering forged cheques; and Thomas Peterson Goudie, bank clerk, Liverpool, was charged with forging cheques for considerable sums.

Mr. C. F. Gill, K.C., and Mr. Charles Matthews prosecuted on behalf of the Bank of Liverpool; Mr. Horace Ivory, K.C., and Mr. Biron appeared for Burge; Mr. Charles Mellor for Kelly, and Mr. F. E. Smith for Goudie. Detective-inspectors Froest and Nearn were in charge of the case.

Mr. Smith applied to the magistrate to instruct the police to give up to Goudie the 280 pounds found on him at the time of his arrest, in order that it might be used for the purposes of his defence.

Mr. Gill said this money must form part of the proceeds of the frauds, and Mr. Fenwick refused the application.

Mr. Gill then proceeded to open the case. He said the prisoner Goudie was employed by the Bank of Liverpool as a ledger clerk for about five years. Up to November 21 last the directors had every confidence in his honesty, and there could be no question as to his ability as a clerk and accountant. He had special charge of the ledgers containing names commencing with the letters H. to K. Consequently, Goudie became very familiar with these customers' signatures and the nature of their accounts. The Bank of Liverpool, it appeared, did not return used cheques to the customers. One of the accounts he had to deal with was that of Mr. R. W. Hudson, who often drew cheques for very large sums. Goudie, it appeared, was in the habit of taking Mr. Hudson's cheques home, and after considerable practice was able

*Bankers' Magazine, January 1902.

to imitate the signature with great facility. At the end of 1899 the prisoner obtained a cheque-book from the bank by means of fraud. From time to time he forged Mr. Hudson's signature to twenty-seven of these cheques, and obtained in this way no less than 169,500 pounds. When the cheques were paid in they went into his possession, and he destroyed them. To give the methods by which he was able to carry out the fraud, said Mr. Gill, would involve a very exhaustive and elaborate explanation. Goudie was a man of very great skill in the manipulation of accounts, and, he might add, possessed a great amount of audacity. Some of the forged cheques were found in a coat the prisoner left behind him when he went away to avoid arrest, together with paper on which he had practised the signature. There could be no doubt from a statement made by the prisoner that he admitted the forgery, although there might be some question as to the total amount. Of course, the important question to decide was what had become of the proceeds of the fraud. Of the total amount it would be proved that 72,000 pounds went into the hands of the prisoner Kelly and a man named Stiles. The story of the way in which they got possession of the money was interesting, as showing the extraordinary credulity of Goudie, who, although a clever book-keeper and accountant, displayed in other respects a great amount of simplicity. It seemed to have leaked out that Kelly and Stiles had a source from which large sums of money could be obtained. About the middle of November it was determined that Goudie should not be left in the sole possession of Kelly and Stiles. Consequently Goudie was interviewed at Liverpool by Mances. It was arranged that Marks should become Goudie's commission agent. The result was that between October 24th and November 14th, 91,000 pounds was paid to Marks in six cheques. As soon as the proceeds were received they were "cut up," Burge receiving one-half, Mances one-third, and Marks one-sixth. As a matter of fact, no bets of any kind were made. Fortunately Mances had left behind him in the bank 10,000 pounds, and had invested 20,000 pounds in Consols. It was alleged that Marks had committed suicide. There were other details connected with the case which he (Mr. Gill) did not propose to deal with at present. Owing to a statement made by the prisoner it would not be necessary to give very elaborate evidence as to the forgeries.

Evidence in support of counsel's statement was then given.

Mr. Robert Wm. Hudson, soap manufacturer, was shown the cheques alleged to be forged. He said the signature was so like his that he should not know it was a forgery if he was not sure that he had never signed a blank bearer cheque for a large amount. He had never had a turf transaction in his life.

An inspector of the Bank of Liverpool gave formal evidence as to the bank's methods. The manager of Lloyd's Bank, Liverpool, deposed as to transactions by all three prisoners with that institution.

The prisoners were remanded for a week.

Mr. Biron applied for bail on behalf of Burge.

Mr. Fenwick said he could only repeat what he said last week, that he would in time take the application for bail into consideration.

On December 16, in the same Court the case was again heard.

Mr. Charles F. Gill, K.C., and Mr. Charles Matthews prosecuted on behalf of the Bank of Liverpool; Mr. Horace Ivory, K.C., and Mr. Biron appeared for Burge; Mr. Charles Mellor and Mr. Lambert for Kelly; and Mr. F. E. Smith for Goudie. Detective-inspectors Froest and Nearn represented the police.

Mr. Mellor said that since the last occasion he had looked at the information. So far as he could see, all the prisoners were charged with uttering forged cheques knowing them to be forged. So far as he could judge, there were charges against Goudie and Kelly and against Goudie and others. He supposed on the last occasion that there was to be a joint charge against all three men now before the Court; otherwise, he would have protested against the two classes of offence being taken together. Evidence against one man was likely to be prejudicial to another. As to the statement that when Kelly's horse named Fors lost a race Goudie was "on," and that when it won he was "off," counsel said that, according to his instructions, the animal went wrong on a critical occasion. It seemed to him that whether Kelly executed commissions or not it could not affect the question as to whether he had uttered forged cheques knowing them to be forged. He was

very anxious to inspect the bundle of telegrams handed in on the last occasion. He hoped Mr. Gill would supply him with copies, and also with copies of a statement said to have been made by Goudie.

Mr. Fenwick had no doubt Mr. Gill would do that, unless there was a very good reason why he should not.

Mr. Mellor said that was very satisfactory.

GOUDIE'S ADMISSIONS

Detective-Inspector Nearn, of Scotland Yard, was then recalled, and said :—I arrested Goudie and brought him up to London by train. He was very talkative on the journey, and, entirely unsolicited by me, made a number of statements. He said, "I first met Stiles and Kelly with another man whilst travelling in a first-class carriage between Newmarket and London. In the train, shortly after leaving Newmarket, I was spoken to first by Stiles, who invited me to join in a game of solo whist with him and two other friends, which I did. Kelly made an appointment to meet him and Stiles at Hurst Park Races on the following day. I agreed, and stayed at the Bedford Hotel, in London, that night. I met Kelly and Stiles, as agreed, and had some bets with them. I returned to Liverpool, and Stiles and Kelly visited me there at various times. I did win once to the amount of 2,000 pounds. When I applied to Kelly for it he said Stiles had borrowed it. I told Kelly he had no authority to pay away money belonging to me. The largest amount I think I ever won from Kelly or Stiles was about 250 pounds in all. I dined once with Stiles and a lady at the Trocadero. On other occasions I have met him in town, and he has introduced me to his wife at Wharfedale Street, Earl's Court. Stiles used to tell me he frequently had 10,000 pounds each way on a horse. I thought he was a substantial man. He had a man named Wicks with him at times who acted as his footman. One one occasion a cheque for 9,000 pounds was returned to the bank, and I was asked if I thought the signature of Hudson was a genuine one. Of course I said, 'Certainly it was,' and it was accepted as Hudson's. I never wrote a cheque twice. They always went through without a challenge. The bank has been defrauded to the amount of about 163,504 pounds 10s. After I had known 'Stripes' (another name for Stiles), a man

approached me in North John Street, Liverpool, where I did some business. He said to me, "You are a man who understands a lot about racing," and forced a conversation on the subject. I told him I was afraid he was mistaken; but he was very persistent, and said he knew I was a bank clerk, and could command plenty of money. I was alarmed, and consented to grant him an interview. I asked him what his name was, and he said Mances. He was staying at the Charing Cross Hotel, I saw him on the evening of the same day, as I feared he might give the whole business away. The conversation was all about betting. Marks was introduced to me by Mances by wire. I never saw Marks. I don't know Dick Burge. Elseworthy and Haggerty at Leeds got 4,000 pounds out of me. Kelly sent me 205 pounds some weeks ago, due to me by Stiles." On arriving at Bow Street I made a note of this conversation.

In answer to Mr. Smith, witness said he was perfectly certain as to the statement as to Haggerty and Elseworthy.

Richard Hills, accountant at the Bank of England, produced four bank notes for 500 pounds, and gave the dates and names of the banks from which they were received. One of them bore the stamp of the Bradford Old Bank, and the name "Styles" or "Stiles" on the back—there was some difference of opinion as to which it was.

Mr. Gill said it would be interesting to trace the history of that note. Burge received it on November 8, from the *Crédit Lyonnais*. He passed it on to Kelly. Kelly paid it into the Bradford Old Bank. On November 14 he drew a cheque to his brother, Anthony Kelly. The same note then went into the possession of Stiles, who paid it into the Earl's Court branch of the London and South-Western Bank.

KELLY'S FLUCTUATING BANK BALANCE

Andrew Chadwick Fox, secretary to the Bradford Old Bank, produced certified extracts from the account of the prisoner Kelly from June 30, 1900, to November 19, 1901. On the first named date, the balance in Kelly's favor was 11 pounds 8s. On October 31 the balance had gone down to about 1 pound. On November 5, 1900, 150 pounds was paid into the account in the shape of three 50 pound notes.

Mr. Matthews said these notes were paid to Kelly on November 3 at the Lombard Street branch of Lloyd's Bank.

Witness went on to speak of other notes paid in by Kelly, and Mr. Matthews explained that these also were paid to Kelly at Lloyds Bank in Lombard Street.

Continuing to deal with Kelly's credit account, the witness showed large payments in the shape of cheques, drafts and notes, purporting to be drawn by R. W. Hudson. Two cheques of 9,000 pounds each were paid in on one day. On June 30, 1901, Kelly's credit balance was 9,006 pounds. During the six months ended on the day just mentioned Kelly was credited with over 38,000 pounds.

Further evidence showed that Kelly continued to pay in cheques signed "R. W. Hudson" for large amounts, including 5,000, 9,700, 7,000, 5,000 pounds, etc. There was some enquiry from the Bank of Liverpool as to the endorsements on two of the cheques. Witness tried to communicate with Kelly, but was unable to find him. A few days afterwards he received a telegram from the Bank of Liverpool saying that the endorsements were in order. Turning to the debit side of Kelly's account, the witness showed that various payments had been made to A. Kelly, who has been alluded to in the course of the case as brother of the prisoner of that name. The first of the payments to A. Kelly was 725 pounds; there were several smaller payments to the same man, who also received the following: 1,000, 500, 200, 500, 500, 4,500 pounds. There was a payment of 2,000 pounds in the name of J. Kelly, and Mrs. Bridget Ann Kelly appeared to have received 268 pounds. The man Stiles received 1,000, 2,150, 1,000, 8,650, 2,000, 225, 500, 2,440, 500, 2,500 and 6,800 pounds. A payment of 60 pounds was made to Burge on April 1, 1901. There were also payments to men named Hardaker, Hodgson, Welson, Fortune, Ginnesa and others. Between July 1, 1901, and November 19, 52,449 pounds was paid into the account, and the balance was now 5,764 pounds. The witness added that Mrs. Bridget Ann Kelly had an account at the Bradford Old Bank, the balance now in her favour being 391 pounds.

In reply to Mr. Mellor, the witness said he knew that Kelly was a racing man. He had reason to believe that some of the

people to whom Kelly paid money were betting men. 1,845 pounds was paid to a Mr. Cooper, whom he believed settled accounts for gentlemen at Tattersall's. His attention was not called to the fact that Kelly was paying in larger sums. The fact of the cheques signed "R. W. Hudson" passing unchallenged prevented his attention being called to the matter.

Re-examined by Mr. Gill, the witness said that in July, August and September last year Kelly did not draw large cheques. In fact the largest was for 50 pounds.

At the luncheon interval Mr. Smith said he had an announcement to make as to something which would probably shorten the case. Goudie was anxious to render the police all the assistance in his power, and it was being arranged that Detective-Inspector Nearn should have an interview with him to-morrow, his solicitor being present. Goudie wished to make a supplementary statement.

The Magistrate: Very well; I have no objection.

STILE'S BANKING ACCOUNTS

Philip Dering Blake, chief clerk at the London City and Midland Bank (Shaftesbury Avenue branch), proved that on November 27, 1900, an account was opened there in the name of W. H. Stiles, of 16 Wharfedale Road, S. W., with two 100 pound notes and three notes for 50 pounds each.

Mr. Matthews explained that these notes had been paid to Kelly at Lloyds Lombard Street Branch.

The witness said 300 pounds was paid in on November 30, on December 4 1,150 pounds was paid, and at the end of that month there was a credit balance of 452 pounds. Commencing with January 22 the witness gave the following list of payments made at his bank in favour of Stiles:—1,500, 950, 1,000, 2,150, 500, 500, 1,000, 400, 8,650, 300, 88, 1,000, 150, 150, 2,440, 300, 600, 1000, 1,000, 1,500 pounds. The cheques for 2,150, 1,000, 8,650, 150 and 2,440 pounds were drawn by Kelly. Some of the cheques were on the London and South-Western Bank at Earl's Court, and there was reason to believe that they were drawn by Stiles, who had an account there. The amount now standing to the credit of the account was 1,672 pounds. On June 27, 500

pounds was paid to Stiles at the Liverpool branch of the bank. On June 8 a cheque for 200 pounds in favor of Emily Ann Haines was drawn and paid in to open an account in that name. On August 26 Stiles transferred 200 pounds to the account of Miss Haines. There were two other deposits amounting to 230 pounds, and the amount now standing to the credit of the company was 399 pounds 15s. 10d.

In reply to Mr. Mellor witness said Stiles was introduced to the bank in a satisfactory way. He did not know that he kept horses at Brighton and had a large house there.

Joseph Bowers, manager of the Earl's Court branch of the London and South-Western Bank, said that on May 1 last William Haines Stiles opened an account there. It was last operated on on November 21 last. There was now a credit balance of 2,983 pounds.

Richard George Hayman, manager of the Brighton branch of the London and South-Western Bank, proved that on November 1, a George Butler opened an account there with a cheque for 500 pounds, drawn by William Haines Stiles.

Francis George Saunders, manager of the Clapham Junction branch of the London and South-Western Bank, stated that W. H. Stiles had had an account at the bank since 1888. It had not been operated upon for some time. On June 15, 1901, an account was also opened by Esther Haines Stiles, and on November 25 last an account was opened in the name of William Haines Stiles, junior.

William Henry Keeping, an accountant at the Clerkenwell branch of the London City and Midland Bank, gave particulars of an account in the name of Joseph H. Stiles, described as a tin-ware manufacturer, 5 Ashley Road, Islington. The account was opened in June of this year by the payment of 200 pounds. Between June 24 and October 28, 1,684 pounds 15s. 10d. was paid to the credit of the account.

The sub-manager of the *Crédit Lyonnais* was recalled in order that the evidence he had already given might be read over.

Mr. Matthews said that, on behalf of the Bank of Liverpool, he wished to thank the management of the *Crédit Lyonnais* for

the great assistance they had given and the caution they had displayed, which had led to the detection of the frauds. They had also lent valuable assistance towards what he hoped would be the recovery of a considerable sum of money by the Liverpool Bank, the directors of which wished to express their gratitude publicly.

At this stage the prisoners were remanded for a week.

CERTIFICATION OF CHEQUES*

THE certified cheque is a modern form of negotiable instrument which had its origin in the custom of merchants, and has become common because of the ease with which the certification is accomplished and the security it affords. From the time it was first known to the present, the custom of merchants has never distinguished the certification of cheques by the banks at the request of any party to the instrument, while the present weight of judicial opinion is in favour of distinguishing the cheque as certified by the bank at the request of the payee-holder, either in person or at his request, and the cheque as certified by the bank for the drawer of the cheque.

It is with this peculiar anomaly that this paper is concerned, though it may not be out of place to add some general statements and rules of law as affecting certified cheques in general. Several papers have been written upon the subject, but none of recent date, and several recent and important decisions render the subject worthy of attention. See the articles of W. A. Bryant, 27 American Law Register, N. S. 141 (1888); W. F.

*Leslie J. Tompkins in The American Law Register.

NOTE.—We reproduce Mr. Tompkins' article, as one of interest to our readers, but are not to be taken as endorsing all the views to which he gives expression. Respecting the chief point Mr. Tompkins aims to make, we would suggest a perusal contemporaneously with his article, of the cases *Boyd v. Nasmith* (reprinted in this issue of the JOURNAL) and *Gaden v. The Newfoundland Savings Bank*, JOURNAL, vol vi., p. 391. It does not seem to us that to hold the drawer of a cheque discharged if the payee-holder have it certified but not if the cheque be certified for the drawer before delivery, necessarily involves attributing different legal consequences to the act of certification.

The true reason of the discharge of the drawer in one case, and not in the other, appears to be this:

When a cheque is given, the drawer impliedly contracts with the payee that on due presentment it will be paid, if the payee so desires. That implied contract embodies the whole right of the payee and the whole obligation of the drawer. The payee's right is to present the cheque and receive the money; nothing more and nothing less. When he presents the cheque and ascertains the preparedness of the bank to pay on the spot, he may, if it pleases

Elliott, 31 Central Law Journal, 373 (1889), and Francis R. Jones, 6 Harvard Law Review, 138 (1892).

THE HISTORY

Like many other customs, the origin of certification in both England and the United States seems clouded in obscurity. No mention is made of it in Kyd's Treatise, written in 1790, nor in Byle's Treatise, written in 1829. Further than that, no mention is made of the "marked cheque" in either of these English works. In this country, Story, who wrote in 1843, makes no mention of it even in an edition printed in 1853, though some mention is made of it in the seventh edition by Thorndike, published in 1878. Parsons, first writing in 1874, makes but slight mention of it. Gilbart, in an elaborate "History of Banks and Banking," published in London in 1827, and revised by Michie in 1882, makes no mention of the custom as affecting English banks.

But later writers such as Grant (England), in 1876; Morse (United States), 1879; Redfield and Bigelow, 1871; Daniels, 1882, and any others who have followed, have treated of the subject elaborately, and the innumerable decisions of late years have justified all and more than has already been said on the subject.

In no case, however, has any one of these writers even attempted to fix the origin of the custom, nor has the present writer been able to find one word as to its history. An attempt has been made to trace its origin in the English custom of

him, *waive present payment*, arranging with the bank to take something else or less in its place. If he do so, the dealing is between him and the bank. The drawee is not concerned with its details. It is not the certification of the cheque that works the discharge of the drawer. It is the act of the payee, who having his opportunity to obtain payment, virtually instructs the bank to hold the money at his risk. The drawer is discharged by the complete fulfilment of his implied obligation to the payee.

In the case of a cheque certified before delivery, the contract between drawer and payee upon delivery, if left to implication, is the same as in the case of an uncertified cheque. The payee must still have his *opportunity* to duly present the cheque for payment and receive the amount. The anterior certification has not given him this opportunity. He who alone could present it for payment has not presented the cheque, nor has he elected to arrange with the bank for anything else than payment on presentment.

In the sense explained it may even fairly be said that in neither case has the act of certification anything to do with the continuance or discharge of the drawer's obligation.—ED. COMM.

"crossed cheques," but the comparison must fail. The crossed cheque was invented for the purpose of restricting negotiability, and the only feature which gives color to such a comparison is the writing of one or more bankers' names across the face of the cheque.

A much closer analogy may be found between the English custom of "marked cheques" and our present custom of certification, though this early English custom was deemed of so little importance as to merit no words, either *pro* or *con*, by the writers of that period.

The first instance of "marked cheques" in the English law appears in the case of *Robson v. Bennett*, decided in 1810; Taunton, 388. In the facts of that case appears the following statement: "It is customary among bankers in London, in their dealings with each other, not to pay any cheque which is presented by or on behalf of another banker, after 4 p.m., but merely to give an answer to the person so presenting it, whether it is a good cheque or not, and in case the cheque is approved, a mark is made on it, either by the person presenting it or by the person who gives the answer. And a cheque so marked is considered entitled to a priority of payment on the next day." The court in this case held that "the effect of marking is similar to the accepting of a bill, for he (the banker) admits thereby assets, and makes himself liable to pay."

The rules which seem to have been drawn from this decision are questionable, because no promise seems to have been behind the marking, but rather a simple conveyance of information. At that time, however, it was thought that the effect of this custom was to create, by the marking, an obligation upon the banker to appropriate the customer's assets in his hands to that particular cheque in priority to others. This case stands alone, unfortified by any decision of value; but what is more important, perhaps, it has never been overruled. The decision was based upon the rule that had obtained for some time, that an oral acceptance was perfectly valid. This rule remained in force until 1856, and this custom of marking cheques certainly lasted until that time. It is easy to see how the custom, existing among bankers, was extended to merchants and others, and finding its way across the Atlantic, was used by the merchants and banks of the United

States. If this theory have any weight, the custom was a long time in coming over, as the first cases appearing in the United States on the subject of certification appear in the following order of time: New York, 1853; Massachusetts, 1854; Pennsylvania, 1861; Illinois, 1866; and the United States Supreme Court, 1870. Nothing more appears in the English courts until 1860, when the case of *Keene v. Beard*, C. B. N. S. 371, decided that a cheque, while generally not treated as a bill and presented for acceptance, might be so treated.

But certification as first used by the bankers and merchants of the United States and as now used, differs entirely in operation and effect from this custom in England. The analogy, if there be any whatever, is not strong enough to support more than the idea that this early English custom may have been the basis of the custom as used in this country, and that around the idea the American bankers and merchants formulated rules as to operation and effect which bear no analogy to the early English custom.

From these few meagre facts we are led to conclude: (1) That certification is peculiarly an American custom. (2) That it was first used about 1850. (3) That it originated among the bankers of New York. Finding it adapted to the commercial interests, it rapidly spread, until to-day it is in use in every city and hamlet, and in the words of JUSTICE SWAYNE of the United States Supreme Court, "We could hardly inflict a severer blow upon the commerce and business of the country than by throwing a doubt on their (certified cheques) validity." *Merchants Bank v. State Bank*, 10 Wall, 604.

THE ENGLISH RULE

In England, the statement that a cheque is a bill of exchange drawn on a banker, and that it does not differ in construction from a bill payable on demand, seems to have been reiterated time and time again. The "marking" spoken of in *Robson v. Bennett* (supra) seems never to have been recognized to any extent by the courts, yet at that time it was recognized as an acceptance, even though the signature of the banker was not attached. Treated thus, it followed the rules of acceptance, which permitted of an oral acceptance, and it is taken for granted

that this rule applied until statutes were enacted requiring the acceptance to be in writing.

These statutes were enacted in 1856 and amended in 1878. Since 1856 there have been no cases in England, because the rule then enacted requiring the acceptance to be in writing and on the face of the instrument, has been rigidly adhered to.

In *Keane v. Beard*, decided in 1860, already spoken of, the acceptance of a cheque was one of the facts in issue, and the court there stated that the acceptance of a cheque is not usual, but there is no reason why it may not be so accepted, and if so, the liability of the bank is the same as that of an acceptor of a bill. Now, there is no acceptance of a cheque, *Willis Neg. Securities*, 170 (London, 1896). Stated broadly then, the law in England is as follows: (1) A cheque is a bill drawn on a bank. (2) In construction, it is treated as a bill payable on demand. (3) With these exceptions, (a) there is now no acceptance of a cheque; (b) the drawer remains liable even if not duly presented, unless prejudiced thereby. Certification, therefore, as we understand it, is not known in England.

BILL OF EXCHANGE AND CHEQUE DISTINGUISHED

The English Bills of Exchange Act (adopted in 1882), as well as the American Negotiable Instruments Law (adopted in 1897) are somewhat misleading in their statements that with certain exceptions, cheques are to be treated as bills of exchange, and "cheque" is defined in both Acts as "a bill of exchange drawn on a bank, payable on demand." The statements are misleading, for they imply no distinction between cheques and bills of exchange. Yet both Acts contain sections which are devoted entirely to rules relating to cheques as distinguished from bills of exchange and promissory notes, thus implying cheques to be different from both of these forms of negotiable instruments, *Bigelow*, 294. "To our mind, the different traits decidedly preponderate; and the more correct method is to treat the cheque as an altogether independent and distinct instrument from the bill of exchange, *Morse on Banking*, 3d ed., sec. 380.

The reported cases, from an early time to the present, invariably sustain the above statement, and it seems to be settled beyond all controversy "that a cheque, though analogous in

many respects to a bill of exchange, is not a bill of exchange," Jones in 6 Harvard Law Review, 138.

Indeed, the analogy may be summed up in a few words as follows: (a) Both contain an order. (b) The order is for the payment of a sum certain in money. (c) There are three parties, drawer, drawee and payee. (d) The duties as to notice to parties secondarily liable (endorsers in the case of cheques) are the same. (e) Neither instrument is an assignment of any money in the hands of the drawee to the payee.

Beyond these points of resemblance, the ways part. Their points of difference are more numerous, and in part are as follows:

(a) A cheque is always drawn on a bank.

(b) Grace is not allowed in a cheque.

(c) The drawer of a cheque is not discharged by laches of the holder in presentment for payment, unless he can show he is prejudiced thereby.

(d) The cheque is not due until payment is demanded, and the statute of limitations runs only from that time.

(e) The cheque must be drawn on funds in the hands of the bank. *Merchants Bank v. State Bank (Supra)*.

(f) The death of the drawer revokes the cheque, while it has no effect upon the duties of the parties to a bill. Zane on Banks and Banking, p. 223, and cases therein cited.

(g) The purchaser of an overdue cheque gets good title irrespective of equities, *London, Etc., Co. v. Groome*, 8 Q. B. D. 288.

(h) Acceptance (certification) of a cheque discharges the drawer, while the acceptance of a bill leaves him secondarily liable.

It follows, *a fortiori*, that cheques, as negotiable instruments, are in a class by themselves, quite as distinct from bills of exchange as bills of exchange are from promissory notes, which no court and no text writer ever doubted for an instant.

CERTIFICATION

The certification of a cheque is a thing *sui generis*, unknown to the Common Law and not in use in England. It originated with the merchants and bankers of New York, and this custom

has long been recognized as law. The custom created the law, but, as we shall see later, the law has stepped in and changed this custom in one particular at least, and in doing this has stultified itself, declaring certification in one case to be a thing in and by itself, unlike acceptance and having no counterpart in the rules affecting acceptance; while in another case it is recognized as an acceptance of a bill of exchange.

MR. JUSTICE PECKHAM in the *First National Bank v. Leach*, 52 N. Y., 350, states generally the law on the subject, and his statement is fortified by many similar opinions both before and since this case was decided.

"The theory of the law is that where a cheque is certified to be good by a bank, the amount thereof is then charged to the account of the drawer in the bank certificate account. Every well-regulated bank adopts this practice to protect itself. The reason therefor is so strong, that the law presumes it is adopted by the banks.

"It follows that after a cheque is certified, the drawer of the cheque cannot draw out the funds then in the bank necessary to meet the certified cheque. The money is no longer his.

"If he apprehended danger from the suspected failure of the bank, he could not draw out that money, because it had already been appropriated by means of the cheque thus certified; as to him, it was precisely as if the bank had paid the money upon the cheque, instead of making a certificate of its being good."

This general statement of the law arising from custom has never been controverted, and it is upon this basis that all banks proceed in doing business.

But while the general statement is undoubtedly the law, there exists an anomalous situation which may be stated as follows:

1. Certification by the bank for the payee-holder discharges the drawer.
2. Certification by the bank for the drawer, at the request of the payee, discharges the drawer.
3. Certification by the bank for the drawer, like the acceptance of a bill, leaves the drawer secondarily liable.
4. The custom of banks and bankers recognizes no such distinction, nor have they ever recognized it.

As to the first proposition above made, the law is too well settled to admit of any extended consideration. Mr. Daniels well summarizes the result; Daniels Negotiable Instruments, sec. 1601. (1) "The bank becomes the principal and only debtor; (2) the holder, by taking a certificate of the cheque from the bank, instead of requiring payment, discharges the drawer; (3) and the cheque then circulates as the representative of so much cash in bank, payable on demand to the holder."

The reason therefor, says Mr. Zane, *Zane on Banks and Banking*, 255, is that novation takes place. The depositor owes his creditor, and the bank owes the depositor. The three agree that the bank may owe the creditor, and the depositor is discharged. While agreeing with Mr. Zane as to the reason therefor, we apprehend that his use of the word "novation" is unhappy. There is neither novation nor adoption but an entirely separate agreement aside from and independent of the original transaction. What has really happened is that the holder has obtained a new obligation or promise from a party who is not obliged to give it to him, which he accepts in lieu of the obligation of his debtor. It is quite the same as if the creditor had accepted United States Treasury notes in lieu of the cheque, or had agreed to accept a horse in lieu thereof, or had taken a certificate of deposit from the bank. All of these are inconsistent with the nature and purpose of a cheque, and the same proposition applies with equal force to the acceptance of a certification.

As to the second proposition, that certification by the bank for the drawer, at the request of the payee, discharges the drawer, the law is not well settled. But the reasons already stated apply with equal force to this proposition as to the first, for the payee by requesting the drawer to have the cheque certified accepts thereby the contract or agreement of the bank. Some doubt has been thrown on this proposition by the decision in the *Randolph National Bank v. Hornblower*, 160 Mass. 401, where the court decided that there was no distinction between the drawer requesting certification at his own volition and requesting it at the instance of the payee. In the latter case the bank certifies it for the use and convenience of the payee-holder, quite as much as though the payee-holder presented it in person. This reason is given in the majority of cases on the subject as distinguishing the

two positions, and if the decision above stated obtain as law, it will go far to undermine the cases which fortify the principle that there is a distinction between certification as procured by the holder and as procured by the drawer. This decision is certainly antagonistic to previously decided cases and is unsound. It is submitted that there is no distinction between the first and the second propositions, and that the two should be stated together as follows: Where the cheque is certified by the bank for the payee-holder, in person or at his request, the drawer is thereby discharged.

Running through practically all the cases from the first on the subject to the very last we are impressed by one statement more than any other, viz.: Certification is something different and more than the acceptance of a bill of exchange. And this statement is found even in the cases which proceed to contradict themselves and hold it to be the same. This brings us to the third proposition, in effect, that where the drawer secures the certification at his own volition, it operates exactly as the acceptance of a bill and the drawer is not discharged thereby, but becomes secondarily liable: *i.e.*, where the bank for any reason whatsoever, refuses or does not pay the cheque, the drawer can be held

This is unquestionably the law in the majority of jurisdictions. Beginning with the first cases on the subject, in point of time, that of *Bickford v. First National Bank*, 42 Ill. 238, and continuing on down to the latest important case, that of *Minot v. Russ*, 156 Mass. 458, the rule seems to have been decided uniformly with the statement made, though for a multitude of reasons.

As has been ably pointed out by Mr. Jones, 6 Harvard Law Rev., p. 138, the Illinois rule was established on the ground that a certified cheque did not operate as money and that the cheque was like a bill of exchange and, further, that the cheque operated as an assignment of the maker's funds in the bank. When we consider that a bill of exchange has, by the preponderating weight of authority, never been treated as an assignment of money in the hands of the drawee and, further, that neither law nor custom has maintained that a cheque was money, there seems to be an inconsistency in this kind of reasoning. This reasoning, however, seems to have been the basis of similar decisions in the

United States Circuit Courts; *Essex Co., Etc., Bank v. Bank of Montreal*, 7 Biss. 193; and in Ohio, *Cinti. Etc., Co., v. Bank*, 51 Oh. St. 106, as well as in Colorado. In New Jersey and Louisiana the courts proceeded upon little or no reason whatever. The New York rule was established upon the ground that a certification of a cheque does not differ from an acceptance because of the warranties of the banks, *i.e.*, that the bank admits nothing save the genuineness of the drawer's signature and the existence of the payee. This has never been doubted.

The Indiana rule is based on the reason that there has been no third party to the agreement, and therefore no transfer or acceptance of the obligation of the bank by the payee, there having been no payment of a debt between the drawer of the cheque and the payee. We leave this for discussion later.

The last important decision on this subject is the case of *Minot v. Russ*, 136 Mass. 458, decided in 1892. The court advanced no reason for its position save a statement that the weight of authority is in favour of the proposition, and cited all the cases of the various jurisdictions as the basis of its position. As clinching all these conflicting ideas comes the Negotiable Instruments Law, adopted in 1897 and thereafter by more than sixteen states, and, in a way, settles the question. By that law certification is regarded as the equivalent of acceptance, and for the reason given for the New York rule, to wit, the warranties are the same as in acceptance.

The law also establishes the long existing rule that where the holder procures the certification, the drawer and all endorsers are discharged thereby. The Negotiable Instruments Law, secs. 187, 188.

Mr. Crawford, who drew the Act, advances as the reasons for the section making certification the equivalent to acceptance, the United States Supreme Court case of the *Merchants Bank v. State Bank*, 10 Wall, 648, the first case, in point of time, in that court, and the New York cases *Cooke v. Bank*, 52 N. Y., 96, and *Farmers, Etc., Bank v. Butchers, Etc., Bank*, 16 N. Y., 125. Then to further fortify the section he cites the case of the *First National Bank v. Northwestern National Bank*, 152 Ill., 296.

We can only think that the learned compiler of the Act misconstrued the language of these decisions, for a cursory glance

at them leads to entirely different conclusions. In the *Merchants Bank v. State Bank* the Court said: "By the law merchant of this country the certificate of the bank that a cheque is good is equivalent to acceptance. It implies that the cheque is drawn upon sufficient funds in the hands of the drawee (does acceptance imply this?), that they have been set apart for its satisfaction (is this implied in acceptance?), and that they shall be so applied whenever the cheque is presented for payment. (Would such a statement apply to an acceptance?) It is an undertaking that the cheque is good then and shall continue, and this agreement is as binding upon the bank as its notes of circulation, a certificate of deposit payable to the order of the depositor, or any other obligation it can assume." If this be what is meant by acceptance of a bill of exchange, then our present ideas must undergo a revolution.

In *First National Bank v. Leach*, which is quoted in part on page 352, one is left to no other conclusion than that a certification is not in any way analogous to the acceptance of a bill, and the mystery is how can the case be cited in support of the rule?

In the *First National Bank v. Northwestern Bank*, 152 Ill. 296, 1894, the question of acceptance vs. certification was not raised.

The court (*dictum*) says "a cheque payable to order is a bill of exchange payable to order on demand," and then says that as in acceptance, the acceptor does not admit the genuineness of the endorser's signature, so a bank in certifying does not admit it, but is "conclusively presumed" (*sic*) to know the drawer's signature.

No one ever doubted the proposition that the bank cannot deny its customer's signature, but just how does it prove that acceptance and certification are the equivalent of each other?

In *Minot v. Russ*, the court said: "So far as the question has been considered, it has been decided that the certification of a bank cheque is not, in all respects, like the making of a certificate of deposit, or in the acceptance of a bill of exchange, but that it is a thing "*sui generis*."

Born v. The First National Bank, 123 Ind. 78, establishing what is known as the Indiana rule, is a case around which much controversy has arisen. In that case the court said: "We agree

with appellant's counsel that.....if the holder elects to procure the certification of the bank, it becomes, in his hands, substantially a certificate of deposit. By his own act he makes the bank his debtor, and releases the drawer of the cheque. The reason for the rule is that the moment the cheque is certified the funds cease to be under the control of the original depositor and pass under the control of the person who procures the certification of the cheque drawn in his favour." No other construction can be placed upon this statement, which is in accord with all decided cases, than that when the holder secures the certification, it operates as a payment, and for the reason stated. But the court sees a distinction when the drawer secures certification, and holds that such a certified cheque is not payment because there is no substitution of one debtor for another. But does the rule above stated, "the funds cease to be under the control of the original depositor, and pass under the control of the person" for whom the certification is secured, cease to operate?

It is true that the drawer may return the certified cheque and thus again secure control, but our question is concerned with the delivery of a certified cheque by the drawer to some third party. Certain it is that the drawer has no right of action against the bank for it, for "after certification, they (the drawers) had no control over the fund or action of the bank in reference to it, nor any right to sue the bank for it. Nor did the bank owe them (the drawers) any duty in relation to it. It no longer possessed the character of a cheque, *Essex Co. Nat. Bank v. Bank of Montreal*, 7 Biss. 193.

Further, to hold this proposition as law carries with it a hardship to the drawer. He cannot withdraw the amount of the certification, yet he is liable, if the bank fails to pay. He is, therefore, in the position of guaranteeing the solvency of the bank, with no power to protect himself. Certainly no such situation was ever dreamed of by the courts where the holder procures the certification.

No good reason exists for distinguishing the act of certification as procured by the different parties. The act is the same in both cases, the instrument is identical in every respect. If the cheque when certified in one case no longer possesses the character of a cheque, it certainly follows that it does not in the other, the

act being the same and the instrument being identical. To hold otherwise, is, to use the language of Mr. Jones, to have two legal consequences for the same act, or to import different rights for negotiable instruments which are exactly the same.

Further, we are forced to agree with one or two able critics of the Negotiable Instruments Act, and say that the drafters thereof seem to have been careless in some portions of their work, and this is especially true in the sections affecting the certification of cheques; for no one of the authorities relied upon to support their rules that certification and acceptance are equivalent, really holds it to be such.

Lastly, of what importance or effect is all this to the bank, and in what way will the real situation affect the bank? To both we may answer, none whatever. A careful enquiry made of a number of bank officials results in the statement that no bank recognizes a distinction as to the party who requests certification. If this were true, and were it of any importance to the bank, a careful entry would be made of the party, whether drawer or holder, seeking the certification, which has never been done and probably will never be done. Custom recognizes no distinction. Upon certification the bank charges it to the account of the drawer, and regards the amount so taken as no longer belonging to the drawer, but to it (the bank), and in its disposition of the fund so taken the bank disregards the drawer entirely. As to whether the drawer procuring certification before delivery shall be secondarily liable, the bank cares nothing, because it is none of its concern.

It would be interesting to note how far a bank may go in revoking a certification, but such a question is hardly relevant to the question in hand. It only remains to say that which has before been implied; certification and the rules affecting it arose from the necessities of commerce, and is based wholly upon the custom of bankers and merchants. It is as peculiarly a custom as is negotiability, why should it not be accepted in its entirety? Did valid reasons exist in favour of the change it were well to consider them; neither reason or justice require it, but, on the contrary, fortify the custom, and it were better to let well enough alone.

ACCEPTANCE OF BILLS OF EXCHANGE

At the last session of Parliament an amendment dealing with the vexed question of the date on which a bill payable at or after sight should be accepted was passed; chap. 2, 1902, "An Act to amend the Bills of Exchange Act, 1890."

The text of the Amendment is as follows:

1. Section 42 of The Bills of Exchange Act, 1890, is repealed, and the following is substituted therefor:

" **42.** The drawee may accept a bill on the day of its due presentment to him for acceptance, or at any time within two days thereafter. When a bill is so duly presented for acceptance and is not accepted within the time above mentioned, the person presenting it must treat it as dishonoured by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and endorsers.

Non-acceptance within two days.

" **2.** In the case of a bill payable at sight or after sight, the acceptor may date his acceptance thereon as of any of the days above mentioned, but not later than the day of his actual acceptance of the bill; and if the acceptance is not so dated, the holder may refuse to take the acceptance and may treat the bill as dishonoured by non-acceptance."

Dating of acceptance.

QUESTIONS ON POINTS OF PRACTICAL INTEREST*

THE Editing Committee are prepared to reply through this column to enquiries of Associates or subscribers from time to time on matters of law or banking practice, under the advice of Counsel where the law is not clearly established.

In order to make this service of additional value the Committee will reply direct by letter where an opinion is desired promptly, in which case stamp should be enclosed.

The questions received since the last issue of the JOURNAL are appended, together with the answers of the Committee :

Days of grace in England

QUESTION 487.—How many days of grace are allowed in England on bills drawn (a) at sight, (b) at three days' sight (c) at sixty days' sight ?

ANSWER.—A sight bill payable in England is not entitled to days of grace, but is payable on demand.

Bills drawn at three days or at sixty days' sight are entitled to three days' grace.

Mortgage security taken by a bank to secure old as well as new advance

QUESTION 488.—A Bank demands security for an existing loan, which the debtor agrees to give if a further loan is made to him. This is agreed to, and he gives a mortgage to secure the whole amount. Would such a mortgage be valid, or, if invalid as to the new portion of the loan, would it be valid to the extent of the previous advance ?

ANSWER.—If the intentions of the parties were in good faith, and the including of the new advances was done in ignorance or by oversight, the Courts would probably hold the mortgage to be valid to the extent of the original loan, but not good as to the new loan. If, however, the parties knowingly and in defiance of

the law included the new advances, then it is probable that the whole might be held to be tainted with illegality, and declared wholly invalid.

Mortgage security taken by a bank to secure a current loan

QUESTION 489.—Can a Bank take a mortgage to secure a current loan?

In event of a mortgage being taken to secure a current loan, must this then be considered as *past due* within the meaning of the Bank Act as affecting the Government statement?

ANSWER.—A Bank may take a mortgage to secure any existing loan, whether the same is current or overdue. If taken for a current loan it does not make the loan past due in any sense.

Security under Section 74 of the Bank Act—Advance by Bank to take up a trade bill held by it under discount

QUESTION 490.—A draft at ten days' date on "A," who is a customer of the Bank, drawn by "B," is sent by "C," another customer, for discount and remittance of proceeds. When the bill falls due, can the Bank loan "A" the necessary funds on security under Section 74 of the Bank Act, or must they obtain a written promise to give such security at the time of discounting the original draft?

ANSWER.—We think the loan granted to take up the draft must be regarded as a new transaction, and that security under Section 74 can be validly taken at the time it is made, or upon a written promise given at that time.

Part payment of a bill—Rights of holders against prior parties

QUESTION 491.—Can a Bank accept part payment of a bill and reserve its rights for the balance against the endorsers by protest or notice of dishonour?

ANSWER.—There is no statutory provision on this point, but the holder of the bill unquestionably has a right to take a part payment and look to the drawer and endorsers for the balance.

Banking Hours—Standard and solar time

QUESTION 492.—The city of St. John proposes adopting Atlantic Standard time (which is 24 minutes in advance of Solar time) on 15th June, and expects the Banks and business houses to regulate their hours by the new time. If the Banks do so it will mean their opening at 9.36 and closing at 2.36 Solar time. Can they legally do this, or must their opening and closing hours be

governed by Solar time? I understand that in Ontario many towns have adopted Standard time. Has the Government passed any legislation authorizing them to do this?

ANSWER.—So far as the rights of a Bank respecting opening and closing are concerned, it has the matter entirely in its own hands, and can open or close whenever it sees fit, provided it does not thereby commit any breach of the contract with its customers which may be implied from the course customarily followed. This contract would be controllable by the Bank on any reasonable notice of a change.

So far as we know, the only question of time which would be affected by such a change as you mention is the protest of bills, which cannot be made until after three o'clock in the afternoon. (See Bills of Exchange Act, Section 51 "B"). At most places in Canada the Banks close by Standard time, and the protests are no doubt made at any time after three o'clock, Standard time. The whole point involved here is whether a presentment by the notary before three o'clock is in order or not. But as notice of dishonour given by a notary would be perfectly valid whether the protest were made before or after three o'clock, the most that could result from protest made before three o'clock would be the inability to collect costs of protest.

The Dominion Parliament has not, so far as we know, passed any legislation respecting the adoption of Standard time. In Ontario it has been adopted as the legal time; R. S. O., chapter 144.

Certified cheque payable to the drawer's order—Subsequent garnishment of funds at credit of accounts

QUESTION 493.—A customer of a Bank draws a cheque on it in his own favour for the full amount of his balance, and has it accepted. The following day proceedings equivalent to garnishment are taken by his creditors, and any balance due him by the Bank would have passed from his control.

On the day following this, the customer presents the cheque for payment. Should the Bank pay him the money, any sums due by it to him having been legally attached?

If the cheque were presented by a third party, what would be the position of the Bank?

ANSWER.—We think that the attachment would prevent the Bank paying the amount of the cheque to the customer under the circumstances mentioned.

Its right to pay a third party would depend on the nature of the so-called "acceptance." If it were such as would be held an "acceptance" under the Bills of Exchange Act, the rights of the third party would of course prevail.

Note signed by two of three executors

QUESTION 494.—When there are three executors appointed to manage an estate, could any two of them, without consulting the third, make the estate responsible by attaching their names as makers or endorsers of a promissory note?

ANSWER.—If by “managing” an estate you mean that the executors have been given authority under the will to carry on business, the right of two out of three to bind the estate would depend entirely on the terms of the will.

Without special authority in the will the executors could not make the estate directly responsible for such obligations, even where they all act together. There may be cases, however, where the executors would be entitled to indemnity from the estate, thus making it indirectly responsible.

Cheque drawn “payment in full of account”—Right of drawee bank to refuse to pay

QUESTION 495.—Has a Bank any legal right to refuse payment of a cheque—or is there any custom to warrant their doing so, there being funds for the same—on which is interlined “Payment in full of account,” or any similar wording?

ANSWER.—We do not think a Bank has any right to refuse a cheque merely because it contains a statement of the purpose for which it is given. So long as it is an unconditional order on the Bank to pay the money, they are bound by their customer's instructions.

Past due note—Right of holder to interest if not mentioned in the note

QUESTION 496.—Can interest be legally collected on a promissory note after note becomes due, no mention of interest having been made on note, said note six months overdue?

ANSWER.—Under Section 57, Bills of Exchange Act, such a note, if dishonoured, bears interest from the date of maturity.

Cheque endorsed “Deposited to credit of”

QUESTION 497.—A cheque payable to “Samuel Smith or Order” is endorsed:

“Pay to the order of Bank . . .
 “Deposited to credit of
 “Samuel Smith.”

Can the Bank on which it is drawn legally refuse payment unless the endorsement is guaranteed by the depositing Bank?

ANSWER.—This is in our opinion a restrictive endorsement under Section 35, Bills of Exchange Act, and so far as any dealing with the item is governed by the “Rules Respecting Endorsements” a guarantee is unnecessary. Under Section 7 of the Rules the deposit by the collecting Bank makes the latter a guarantor of the endorsement.

The legal rights of the parties are, however, not touched by these Rules. Under sub-section 2 of Section 35, Bills of Exchange Act, the endorsee in this case would appear to have a right to receive payment of the bill, and to sue any party whom his endorser could have sued. We are therefore of opinion that the drawee Bank cannot legally refuse payment.

Interest on daily balance—method of computing

QUESTION 498.—A customer who is allowed 2% interest on his daily balances of \$5,000 and over in current account is in the habit of making deposits the last thing in the day to make his balance over the \$5,000. This is largely withdrawn the next morning and made good again before closing. The effect is that the minimum balance in each day is considerably below \$5,000, but the balance at the close of business is always considerably in excess. On what balance should interest be allowed?

ANSWER.—There is no doubt that the term “Daily Balance” means the balance standing in the account at the close of business each day, and in the account mentioned the customer would be entitled to interest on the balance as appearing in the books at the close of business. Such an account may not be worth the interest paid, but the Bank’s remedy is to cancel or amend the contract.

Forged cheque paid through the Clearing House—Right of paying Bank to recover

QUESTION 499.—If a Bank pays a cheque drawn on itself through the Clearing House, and some days afterwards discovers signature is a forgery, can it recover amount from the Bank to which it was paid?

ANSWER.—No. The drawee who accepts a bill is precluded from denying the genuineness of the drawer’s signature, so that if a cheque were accepted by the Bank it could not (under ordinary circumstances) object afterwards to the holder that the drawer’s signature was forged. Bills of Exchange Act, Section 54, sub-section 2.

When a cheque or bill is paid the same rule applies as regards the party to whom the money was paid.

"No protest" instructions in letter enclosing a note but not attached to note itself

QUESTION 500.—Referring to reply to Question 464, a letter is sent containing a promissory note for collection, with instructions not to protest, but such instructions are not attached to the note. Should the latter be protested or not?

ANSWER.—The instructions in the letter should clearly be followed. There can be no doubt whatever as to the intention of the party sending the note when he gives his instructions in this shape.

Our reason for suggesting that precaution should be taken where the instructions were only in the form of a slip attached was the possibility that a slip belonging to some other bill might have been attached in error. The collecting Bank in such a case would be free from responsibility, and the precaution would be merely an act of consideration.

Succession Duties in Quebec—Bank Deposit

QUESTION 501.—A person dies, having a deposit with a Bank in the Province of Quebec exceeding three thousand dollars. Can the executor or administrator transfer the amount before succession duties are paid?

If succession duties were not paid, would the Bank be liable for such duties?

ANSWER.—We are advised in this matter as follows;

1. An executor cannot give a valid title before succession duties are paid.
2. The bank would not be liable for such duties. But, under certain circumstances, an action in damages would lie against them, if they were knowingly parties to an illegal act, such as the transfer above referred to.

Married Women in Province of Quebec—Bank deposit

QUESTION 502.—A married woman in the Province of Quebec has a deposit in a Bank. Can it be seized under judgment against her husband? There is no marriage contract.

ANSWER.—We are advised that it can be seized.

Legal

SECURITY UNDER SECTION 74 OF THE BANK ACT, ON SAWN LUMBER

Beaudry et al. v. Molsons Bank: In this case the Molsons Bank advanced moneys to a firm of Bulmer & Company, saw-millers, taking as security therefor assignments, purporting to be made under Section 74 of the Bank Act, of their stock of lumber. Bulmer & Company becoming insolvent, Beaudry, on behalf of himself and other creditors, contested the right of the Molsons Bank to hold the lumber, on the ground that the security was given for anterior indebtedness and that Bulmer & Company were not qualified to give such security under the terms of Section 74 of the Bank Act.

On the latter point the Court found in effect that lumber was not the product of the forest but the product of the saw-mill from the product of the forest, and therefore not an article of merchandise on which security could be taken by a Bank under the terms of the Section mentioned. In arriving at this conclusion, the Court appears to have taken the view that as far as the lumber business was concerned the Legislature, in enacting this clause of the Bank Act, had sought to encourage the exploitation of the forests and not to create the privilege involved in favour of a Bank when lumber more or less manufactured was the object of trade. They interpreted the privilege as limited to saw-logs, pointing out that under any other interpretation it would be impossible to say where the definition "product of the forest" would stop.

Certification of Cheque, Effect of.—We reprint in abbreviated form the judgment in *Boyd v. Nasmith*, as of interest in connection with the article on the above subject also republished in this number. This judgment and that in *Gaden v. Newfoundland Savings Bank* (JOURNAL, vol. vi., p. 391,) cover the law on a subject respecting which numerous questions are being submitted by Associates from time to time.

LEGAL DECISIONS AFFECTING BANKERS

KING'S BENCH DIVISION, ENGLAND

*Edelstein v. Schuler and others

Bonds payable to bearer, whether Government bonds or trading bonds, foreign or English, are, by the usage of merchants, negotiable instruments, and it is no longer necessary to tender evidence in support of the fact that such bonds are negotiable, the Courts now taking judicial notice of that fact.

Bearer bonds of a foreign corporation and of an English company were stolen from the plaintiff by his clerk, and the clerk instructed a country stockbroker to sell them. The broker sold them in the ordinary way of business through the defendants, who were brokers on the London Stock Exchange. The bonds were sold to jobbers, and when sold they were sent to the defendants, who handed them to the jobbers in exchange for the price. The money was then remitted to the country broker, who paid it to the clerk. The defendants acted throughout in good faith. It was proved that the bonds were treated in the mercantile world as negotiable instruments. In an action to recover the value of the bonds from the defendants :

Held, That, as the defendants, by negotiating the sale of the bonds to the jobbers, came under a personal liability to them to deliver the bonds, and that, as in consideration of the defendants undertaking this liability, the country broker promised to deliver the bonds to them, the country broker looking to the defendants and not to the jobbers for the price of the bonds, the defendants became holders for value of the bonds when they got possession of them, and being *bona fide* holders for value of negotiable instruments, were not liable.

Quære whether, even if the defendants were not holders for value, they could be made liable.

This was an action brought by Mr. Victor Edelstein, of Bradford, Yorkshire, against Mr. Percy Schuler and Messrs. Percy Schuler & Co., of Angel court, Throgmorton street, E. C., to recover damages for conversion of bonds and other securities, the property of the plaintiff.

The case raised questions of great importance to bankers, brokers and others dealing with bearer bonds which are treated commercially as negotiable. The facts and arguments sufficiently appear from the judgment.

Mr. Justice Bigham read the following judgment :

This was an action in trover to recover the value of certain bearer bonds alleged to have been converted by the defendants to their own use. The bonds in question were those of the De Beers Mining Company, the Denver Railway Company, the

Mexican Railway Company, and the Union Pacific Railway Company. All these were bonds of foreign corporations. There were also some bonds of the Bechuanaland Railway Company, which is an English company, registered under the Companies Acts. The bonds are in the ordinary form of such securities. It appeared at the trial that the plaintiff, to whom these bonds belonged, kept them in a safe in his office. They were stolen from the safe by one of the plaintiff's clerks. This clerk then, from time to time, employed a broker named Megson, who traded on the Stock Exchange at Bradford, to sell the bonds. Megson, in the ordinary way of business, sold them through the defendants, who are stockbrokers carrying on their business on the London Stock Exchange. The bonds were sold to jobbers either for cash or for the account, and when sold they were sent to the defendants so that they might hand them to the jobbers in exchange for the price. When the defendants received the money they remitted the amount to Megson, either in cash or in account current, and he, in his turn, paid the money to the clerk. It was admitted that the defendants had no notice of any infirmity in the vendor's title and that they acted throughout with perfect *bona fides*. On discovering the theft the plaintiff brought this action. Neither the thief nor Megson was worth suing, and probably the plaintiff doubted whether he could make out a cause of action against the jobbers; but, whatever the reason, he selected the London brokers as the persons whom he would sue, and I have to determine whether they are liable. A body of evidence was called at the trial to show that all these bonds pass from hand to hand among the people who deal in them, and that they are treated as negotiable in the same way as the bonds of foreign Governments. No serious attempt was made to refute this evidence, and it quite satisfied me that all the bonds in question belong to a class which bankers, stockbrokers, and others, whose business it is to deal in such securities, treat, rightly or wrongly, as negotiable and as passing from hand to hand by mere delivery. It is in these circumstances that the plaintiff seeks to fix the defendants with liability. He says that, though such bonds may in fact be treated commercially as negotiable, they are not in law negotiable; and he further says that even if lawfully negotiable, yet, as the defendants were never holders of them for value, they are liable in trover, having handled them with the intention of vesting the property and possession in the jobbers who bought them. In support of the first of these two contentions, Mr. Danckwerts argued that the attribute of negotiability could not be attached to a contract except by the law merchant; and that these bonds are of such recent creation that their negotiability under that branch of the law cannot be justified. It is no doubt true that negotiability can only be attached

to a contract by the law merchant or by a statute; and it is also true that in determining whether a usage has become so well established as to be binding on the courts of law, the length of time during which the usage has existed is an important circumstance to take into consideration; but it is to be remembered that in these days usage is established much more quickly than it was in days gone by; more depends on the number of the transactions which help to create it than on the time over which the transactions are spread; and it is probably no exaggeration to say that nowadays there are more business transactions in an hour than there were in a week a century ago. Therefore, the comparatively recent origin of this class of securities, in my view, creates no difficulty in the way of holding that they are negotiable by virtue of the law merchant; they are dealt in as negotiable instruments in every minute of a working day, and to the extent of many thousands of pounds. It is also to be remembered that the law merchant is not fixed and stereotyped; it has not yet been arrested in its growth by being moulded into a code; it is, to use the words of Lord Chief Justice Cockburn in *Goodwin v. Roberts* (L. R. 10 Ex., at p. 346), capable of being expanded and enlarged so as to meet the wants and requirements of trade in the varying circumstances of commerce, the effect of which is that it approves and adopts from time to time those usages of merchants which are found necessary for the convenience of trade; our common law, of which the law merchant is but a branch, has, in the hands of the judges, the same facility for adapting itself to the changing needs of the general public; principles do not alter, but old rules of applying them change, and new rules spring into existence. Thus it has been found convenient to treat securities like those in question in this action as negotiable, and the courts of law, recognizing the wisdom of the usage, have incorporated it in what is called the law merchant, and have made it part of the common law of the country. In my opinion the time has passed when the negotiability of bearer bonds, whether Government bonds or trading bonds, foreign or English, can be called in question in our courts. The existence of the usage has been so often proved and its convenience is so obvious that it must be taken now to be part of the law; the very expression "bearer bond" connotes the idea of negotiability, so that the moment such bonds are issued to the public they rank themselves among the class of negotiable securities. It would be a great misfortune if it were otherwise, for it is well known that such bonds are treated in all foreign markets as deliverable from hand to hand; the attribute not only enhances their value by making them easy of transfer, but it qualifies them to serve as a kind of international currency; and it would be very odd and a great injury to our trade if these

advantages were not accorded to them in this country. But I am not to be guided alone by evidence and by questions of expediency. The point is entirely covered by authority. The arguments in support of the contention that these bonds are not negotiable were all adduced before and carefully examined by Mr. Justice Kennedy in the case of *The Bechuanaland Exploration Company v. London Trading Bank* [(1898] 2 Q. B., 658), and were dismissed by him as unsound. I have read the judgment in that case, and I desire to say that I entirely agree with the conclusions and with the reasons which led up to them. I go, perhaps, further than Mr. Justice Kennedy intended to go, for I think that it is no longer necessary to tender evidence in support of the fact that such bonds are negotiable, and that the courts of law ought to take judicial notice of it. The negotiability of the bonds being established, it is clear that the jobbers who bought them, having given value and having acquired them without any notice of infirmity in the vendor's title, could not be sued in trover by the plaintiff. But can the defendants, the brokers who assisted in perfecting the good title acquired by the jobbers, be sued? It is said they can. A broker who merely negotiates the sale of chattels without the authority of the true owner commits no tort at all. The sale is a mere void act. It divests the true owner of no right and it does not physically interfere with his control or possession of the goods. But if in addition to negotiating a sale the broker meddles with the goods themselves and hands them to the buyer with the object and intention of transferring to the buyer the property and possession in pursuance of the unauthorized sale, then he makes himself liable in trover to the true owner, for he is guilty of an act in relation to the goods themselves which is inconsistent with the rights of the true owner. It is argued that the defendants, by what they did in handing the bonds to the jobbers, have brought themselves within this rule of law. But, in my opinion, before the defendants had possession of the bonds at all, or physically dealt with them in any way, they had become entitled to them for a valuable consideration just as effectually as the jobbers subsequently became entitled to them by paying the purchase price. When in the ordinary course of business the defendants negotiated the sale of the bonds to the jobbers, they came under a personal liability to the jobbers to deliver them. This liability they undertook at the request of Megson, who was acting for the thief, and, in consideration of their undertaking the liability, Megson or the thief promised that he would deliver to them the bonds; these circumstances, in my view, made the defendants holders for value, and, as the bonds were negotiable, gave them power to deal with the bonds. Or it may be put in another way. Megson, in the ordinary course of business, would look to the

defendants (so long as they were solvent) and not to the jobbers for the price of the bonds; it is the defendants whom he would treat as the buyers and to whom he would look, and, in fact, did look, for his money. This is the way in which the transactions would be carried through, and although this course of business does not make the defendants the buyers of the bonds, it makes them, in my opinion, holders for value as soon as they get possession of them and hand over the money in exchange for them. I think for these reasons that the defendants became as much holders of the bonds for value as the jobbers, and that they are entitled to the same protection. But even if they were not holders for value, I doubt whether they could be sued in trover, or sued at all. There appears to me to be an essential difference between meddling with goods with the intention of transferring a title which will be bad as against the true owner, and the case of assisting in perfecting a title which will be good as against the true owner. It would be very odd that an action should lie against the broker for assisting the jobber to get his title, when no action lies against the jobber who gets the title; and to so hold would go far to destroy the advantages of the negotiability of the bonds. It is not, however, necessary for me to decide this point. It is sufficient for me to say that, in my opinion, these bonds were negotiable instruments, and that the defendants were holders of them for value.

Judgment for defendants.

SUPREME COURT, CANADA*

Alfred Robinson (Plaintiff), Appellant; George T. Mann
(defendant), Respondent†

Under sec. 56 of The Bills of Exchange Act, 1890, a person who endorses a promissory note not endorsed by the payee may be liable as an endorsee to the latter.

The provisions of the Ontario Chattel Mortgage Act requiring the consideration of a mortgage to be expressed therein is satisfied when the mortgage recites that the endorsement of a note is the consideration and then sets out the note. Only the facts need be stated, not their legal effect.

Appeal from a decision of the Court of Appeals for Ontario affirming the judgment at the trial in favour of the defendant.

The questions raised on the appeal are sufficiently indicated in the above head note, and the facts as far as they are material are set out in the judgment of the court.

*Present: Sir Henry Strong, C. J., and Taschereau, Sedgewick, Girouard and Davies, JJ.

†Sup. Ct. Repts., Vol. xxxi. p. 484.

The judgment of the court was delivered by :

THE CHIEF JUSTICE (oral).—We all think this appeal must be dismissed. The questions to be decided are: First, Did the respondent incur any liability by endorsing a note not made payable to him but to the Molsons Bank, and not endorsed by the payee? Secondly, Were the recitals in the chattel mortgage of the consideration for which it was made sufficient?

As to the first point, it appears that the note in question was in form as follows :

LONDON, Sept. 25th, 1899

\$1,200.00.

Three months after date I promise to pay to the order of the Molsons Bank, at the Molsons Bank here, twelve hundred dollars for value received.
W. MANN & Co.

Endorsed on the back was the name "George T. Mann."

Then the position was this: George T. Mann, the present respondent, endorsed a note signed by W. Mann & Co., and payable to the Molsons Bank. It is contended that he was not an endorser and, as such, liable to the bank to whom the note so endorsed was delivered and by them discounted, Walter Mann receiving the proceeds.

Next, what was the legal effect of this endorsement? Section 56 of the Bills of Exchange Act, 1890, provides that

where a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liability of an endorser to a holder in due course and is subject to all the provisions of this Act respecting endorsers.

Then, when the bank took the note, was it not entitled to the benefit of the respondent's liability as endorser? Certainly it was, for by force of the statute the endorsement operated as what has long been known in the French Commercial Law as an "aval," a form of liability which is now by the statute adopted in English law.

The argument for the appellant, as I understand it, is that this endorsement, at most, amounted only to a guarantee, and that there being no consideration expressed in writing, the statute of Frauds would have been an answer if the bank had sued the respondent. Some colour is given to this argument by the case of *Sanger v. Elliott* as reported in 4 Times Law Reports, p. 524, but there the Bills of Exchange Act was not referred to, and it appeared that the bill had not been negotiated. It is to be remarked that that case is not to be found in the regular series of reports. Here, however, the note was negotiated and the bank were holders in due course and, consequently, the 56th section of the Act applies and creates a liability as endorser independently altogether of the principle of guarantee. If the section referred to is to have any effect it must apply in a case like this.

Then as to the recital in the chattel mortgage. It declares the endorsement of the note to be the consideration and sets out the note itself, which is surely a sufficient compliance with the requirement of the Act that the consideration should be recited. It is not necessary that the mortgage should state the legal effect of the facts set out as forming the consideration. It is sufficient to state the facts and leave the legal effect to be inferred.

I agree with the reasons given by their lordships in the Court of Appeal for deciding this case in favour of the respondent, but I do not agree with MR. JUSTICE OSLER, who, I think, puts the case too favourably for the appellant when he says that the bank would have found it difficult to enforce the liability on the note against the respondent. In my opinion the respondent was clearly liable under the 56th section of the Bills of Exchange Act already referred to.

The appeal fails and must be dismissed with costs.

Appeal dismissed with costs.

SUPREME COURT, CANADA*

John Houston and Thomas N. Ward (Defendants), Appellants
and The Merchants Bank of Halifax (Plaintiff) Respondent†

H. held a chattel mortgage on a sawmill belonging to G., with the machinery and lumber therein, and all lumber that might at any time thereafter be brought on the premises. The mortgage not being registered gave H. no priority over subsequent encumbrancers. Two months later G. gave H. a second mortgage on said property to secure a note for \$794. Shortly after this a contractor applied to G. for a large quantity of lumber for building purposes. G., being unable to purchase the logs, asked the Merchants Bank for an advance. The bank, knowing G. to be financially embarrassed, refused the advances to him, but agreed to make them if some reliable person would purchase the logs, which was done by G.'s book-keeper, and, in consideration of an advance of \$3,500, G. assigned the contractor's order to the book-keeper and agreed to cut the logs at a price fixed and deliver them to the bookkeeper at the mill site. The latter then assigned to the bank all moneys to accrue in respect to the contract, which assignment was agreed to by the contractor, and a day or two after also assigned to the bank three booms of logs by numbers, in addition to one assigned previously. This purported to be done under sec. 74 of The Bank Act. Two or three days later G. made an assignment for benefit of his creditors, previous to which, however, the logs had arrived at the mill and were mixed with other logs of G. The greater part had been converted into lumber when H. seized them under his chattel mortgage.

*Present:—Sir Henry Strong, C. J., and Gwynne, Sedgwick and Girouard, JJ. (Mr. Justice King was present at the argument, but died before judgment was delivered.)

†*Supreme Court Reports*, vol. xxxi., p. 361.

Held, affirming the judgment of the Supreme Court of British Columbia (7 B. C. Rep. 465), that no property in the logs assigned to the bank had passed to G., and H., having no higher right than his mortgagor, could not claim them under his mortgage.

Shortly before G.'s assignment for benefit of his creditors his book-keeper transferred to the bank a chattel mortgage given him by G. to secure payment of \$800. The judgment appealed from ordered the assignee in bankruptcy to pay the bank the balance due on said mortgage.

Held, reversing said judgment, that the assignee had been guilty of no acts of conversion and was not liable to repay this money. The mortgage was not given to secure advances and did not give the bank a first lien on the property. The bank was in the same position as if it had received the mortgage directly from G. when he was notoriously insolvent.

Appeal from a decision of the Supreme Court of British Columbia reversing the judgment at the trial in favour of the defendant.

The following statement of facts is taken from the judgment of DRAKE, J., on appeal :

" The facts of this case are somewhat involved. Gray was a sawmill owner at Nelson, B. C., and being involved in financial difficulties, on the 25th of April, 1898, he made a bill of sale, by way of mortgage to Houston, of his sawmill and machinery and all lumber therein, and all lumber, dressed or undressed, which might at any time be brought on the mill premises. This bill of sale was apparently not duly registered, as the affidavit made in support of it was not sworn until the 26th of September, 1898, and is therefore not binding on subsequent encumbrancers. The defendant undertook at the trial to furnish certified copies of his bills of sale, but hitherto has not done so. We must, therefore, take the bills of sale as they appear in the appeal book to be correct.

" On the 28th of June, 1898, Gray gave to Houston a further bill of sale by way of mortgage to secure a note of \$794.22 payable on demand with ten per cent. interest. This bill of sale was apparently regular. On the 11th of August, 1898, Lawford assigned to the plaintiffs a chattel mortgage given to him by Gray on the mill and machinery to secure \$800. Gray also made an assignment to Ward for the benefit of his creditors of all his property, and Ward, according to his evidence taken 27th of January, 1899, contested the plaintiff's right to the machinery as being subject to the security in favour of Gray's creditors. Some time about the 1st of August, W. H. Armstrong, a contractor, applied to Gray to be supplied with a large quantity of lumber for bridge

building. Gray had no means of buying the necessary logs, and applied to the plaintiffs for an advance. The plaintiffs, aware of Gray's position, refused, but the manager, Mr. Kydd, said if some person whom they could trust would undertake the contract they would advance the necessary funds to him to buy the logs, and Mr. L. C. Lawford, Gray's book-keeper, with the approval of the plaintiffs, agreed to buy the logs, and the plaintiffs agreed to advance him the necessary funds for the purpose in order to carry out the arrangement. On the 4th of August Gray assigned the order of Armstrong to Lawford, and agreed to cut the lumber at \$1.50 per M. and deliver the same to Lawford at the mill site. This agreement purports to be made in consideration of an advance of \$3,500 to Gray."

"On 6th August Lawford assigned to the plaintiffs all moneys to accrue due to them from Armstrong in respect of the contract which Armstrong accepted. On the 8th of August L. C. Lawford assigned to the bank booms 48, 49 and 50, aggregating 545,000 feet, which were then in process of cutting, having previously assigned boom 47. This assignment purported to be made under section 74 of the Bank Act, 1890. On the 30th of August boom 49 was assigned to the bank. On the 6th of September boom 50 was also assigned, and on the 20th of September a further deed confirming the former assignments, and including boom 47, was made by Lawford to the bank. These various documents seem to have been executed by way of precaution to make the bank secure in case any mistake had occurred in the original transfers under the Bank Act. All moneys necessary to pay the expenses connected with the booms were advanced by the plaintiffs to Lawford, and disbursed by him, and Gray gave Lawford promissory notes for the sums he had thus advanced, and these notes were endorsed to the bank."

"These booms arrived at the mill, and when there Gray appears to have mixed the logs with other logs in his boom, and the greater part were converted into lumber, and immediately Houston, as alleged mortgagee, claimed them under his chattel mortgage."

The judgment of the court was delivered by :

THE CHIEF JUSTICE.—This case, for the facts of which I refer to the judgments in the courts below, involves two

separate appeals, one by Houston, who claims a lien on the logs in question, having priority over that of the respondent, and the other by Ward, the assignee, for the benefit of creditors of Gray, who insists that he is not liable to the bank for the money which the judgment has directed him to pay.

As regards Houston's appeal there can, in my mind, be no doubt but that the proof established conclusively that the money advanced by Mr. Kydd, the agent of the bank, was so advanced to Lawford as the agent of Gray to enable the latter to purchase the logs required to carry out the Armstrong contract, and that the logs seized by Houston on the 16th of September included the logs purchased for that purpose. The legal consequence is that under the 74th and other sections of the Banking Act the bank had a first lien upon the logs so purchased with their money, which they in good faith lent for the purpose to which it was thus applied, and that Houston is bound to account for the logs he so possessed himself of.

As to Ward, it does not appear to us that he was guilty of any conversion or other wrongful act as regards the logs. The appeal by him should therefore be allowed and the action dismissed against him except in so far as it is considered to be in the nature of a mortgage action for the purpose of enforcing a security.

The first clause of the judgment which directs Ward to pay to the respondents \$530, being the amount secured by a chattel mortgage of the 15th of August, 1898, Gray to Lawford, assigned to the bank on the 16th of September, is manifestly wrong. The bank is not entitled to any security on those chattels giving them priority under the Bankers' Act. It was not given to secure money advanced to buy the goods. It is conceded that Houston has priority over these tools and plant, Lawford having paid merely the vendors lien of A. C. Shaw & Co. did so presumably with the money of Gray and was entitled to no security from Gray, and the bank as assignee of Lawford can stand in no better position as against the creditors of Gray represented by Ward his assignee.

It is therefore just as if Gray, when he was notoriously insolvent to the knowledge of the bank and on the same day on which he executed an assignment for the benefit of his creditors, had made a direct mortgage to the bank; manifestly such a mortgage cannot be enforced.

Houston's appeal is dismissed with costs. Ward is entitled to the costs of his appeal here and also to all costs in the court below except (as regards the costs below) in so far as he is to be regarded as the representative of the mortgagor in an action to realize a mortgage security, and as to these latter costs, they are to be reserved until the final decree.

Appeal of Houston dismissed with costs. Appeal of Ward allowed with costs.

COURT OF APPEAL, ONTARIO

Rennie et al v. Quebec Bank et al

Action by husband and wife to set aside an assignment to a bank by the husband's execution debtor of his share or interest in the assets and business of a partnership. The assignment was made in February, 1896, as security for a past due debt exceeding the amount of the assignor's interest in the partnership. The husband recovered judgment against the assignor in May, 1896, in an action brought before the assignment, and placed execution in the sheriff's hands in July, 1896. Under that execution, the sheriff, without making any actual seizure of the partnership assets, purported to sell and convey to the wife in October, 1896, all the undivided share or interest of the assignor exigible under execution in the partnership assets or business. This action was begun in November, 1898 :

Held, that the assignment was not invalid under the Bank Act, nor under the Statute of Elizabeth, there being no evidence that it was made with intent to delay and defraud the husband in his action against the assignor.

Under the law as it stood at the date of the assignment, notice thereof to the assignor's partners was not necessary to its validity.

Per ARMOUR, C. J. O.:—Debts are not included in the expression "goods, wares and merchandise," as used in the Bank Act.

The effect of placing the execution in the sheriff's hands was to bind the goods of the partnership, so that they were liable to be seized, but no seizure of any specific assets having been made, and all the assets of the partnership having been sold, realized and disposed of, the execution creditor lost any benefit which he might have derived from the seizure of specific assets and the sale thereunder of the undivided interest of the execution debtor therein; and nothing passed to the wife by the sale to her.

Judgment of a Divisional Court, 1 O. L. R. 303, affirmed.

This was an appeal by the plaintiffs, John Rennie and Margaret Rennie, from the judgment of a Divisional Court (BOYD, C., and ROBERTSON, J.,) affirming the judgment of the trial judge (MEREDITH, C. J.,) dismissing the action, which was brought to set aside an assignment by the defendant, Hugo Block, to the defendants, the Quebec Bank, of his interest in the assets and business of the firm of Reid, Taylor and Bayne, and for other relief.

The facts are stated in the report of the judgments below, 1 O.L.R. 303, and in the present judgments.

The appeal was heard by ARMOUR, C. J. O., OSLER, MACLENNAN, MOSS and LISTER, JJ.A., on the 17th and 20th January, 1902.

April 10. ARMOUR, C.J.O.:—In my opinion the judgment appealed from is right and should be affirmed.

And first as to the action of the male plaintiff.

Debts are not included in the expression "goods, wares, and merchandise" as used in the Bank Act, 53 Vict. ch. 31 (D.)

Debts were held in *Ryall v. Rowles*, 1 Ves. Sr. 348, to be included in the expression "goods and chattels" as used in the Bankrupt Act under discussion in that case; and "choses in action were held to be included in the expression 'goods and chattels' in all the Bankruptcy Acts from the time of James I. downwards:" *Colonial Bank v. Whinney* (1885), 55 L. J. ch. 585.

And this construction was put upon this expression by reason of the object and intent of these Acts.

The expression "goods and chattels," as used in 13 Eliz. ch. 5, was held not to include debts, because they could not be reached by an execution: *Dundas v. Dutens* (1790), 1 Ves. Jr. 196; *Sims v. Thomas* (1840), 12 A. & E. 536.

And the expression "goods and chattels," as used in the Execution Act, R. S. O., 1897, ch. 77, plainly does not include debts.

The expression "goods, wares and merchandise," as used in the 17th section of the Statute of Frauds, was held not to include choses in action: *Humble v. Mitchell* (1839), 11 A. & E. 205.

Debts not being included in the expression "goods, wares and merchandise," as used in the Bank Act, there was nothing in that Act prohibiting the Quebec Bank from taking an assignment from Hugo Block of the debt due to him from his co-partners as security for the debt which he owed to the bank, and it cannot be said that the taking by the bank of such an assignment as such security was beyond the powers of the bank as not being incidental to the powers conferred upon it by its incorporation.

Had the taking of such an assignment by the bank been prohibited by the Bank Act, the difficult questions would have arisen which were suggested in *Ayres v. South Australian Banking Co.* (1871), L. R. 3 P. C. 548.

The assignment was for good consideration, and was made on the 4th February, 1896, and the execution of the male plaintiff against Hugo Block was placed in the sheriff's hands on the 10th July, 1896, and on the 28th July, 1896, the solicitors of the Quebec Bank wrote to Hugo Block's co-partners notifying them of the assignment by him to the Quebec Bank of "two certain debts" owing by them to him, "one amounting to \$20,000 and the other to \$9,939.05," to which the said co-partners replied, acknowledging the receipt of the said letter "notifying us that Mr. Hugo Block has assigned to the Quebec Bank the amount of the debt due by our firm, viz., \$20,000 and

\$9,939.05, total \$29,939.05, which sum was the amount at credit of his account on the 4th day of February last and also at this date."

The effect of the assignment as the law stood at the time it was made was to vest the property in the debts assigned in the Quebec Bank, and notice of it to the debtors was not necessary to its validity, but was only necessary to prevent defences or set-off to the debts assigned arising after the assignment, and before such notice, and to enable the title of the assignees to prevail against a subsequent assignee: R. S. O. 1887, ch. 122, secs. 11 and 12; *Gorringe v. Irwell India Rubber Works*, 34 Ch. D. 128.

But for the case of *Warnock v. Kloeffer* (1888), 15 A. R. 324, 18 S. C. R. 701, I would have thought that as the execution of the male plaintiff did not bind the debts due to Hugo Block by his co-partners, the male plaintiff could not have attacked the assignment without first obtaining and serving upon the debtors an order attaching all debts owing or accruing from them to Hugo Block, or by bringing an action on behalf of himself and of all the other creditors of Hugo Block; but that case decides that he could do so.

No evidence was, however, given by the plaintiffs which would have warranted the setting aside the assignment as offending either against the provisions of 13 Eliz. ch. 5, or of R. S. O. 1897, ch. 147.

It was conceded that although it was intended that Reid, Taylor and Bayne should be general partners, and Block a special partner of the firm of Reid, Taylor and Bayne, under the provisions of R. S. O. 1877, ch. 122, they became, the provisions of that Act not having been observed, general partners in the business carried on by that firm.

The effect of placing the execution of the male plaintiff in the sheriff's hands was to bind the goods of the partnership, so that, into whose ever hands they came afterwards, they were liable to be seized under it by the sheriff, and they might be conveyed away, but not so as to defeat the right of the execution creditor to have them seized: *Woodland v. Fuller* (1840), 11 A. & E. 859.

But, although goods in specie of the partnership were so bound, money, bank notes, cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, and other securities for money belonging to the partnership, were not so bound; *McDowell v. McDowell* (1863), 1 Ch. Ch. 140.

The sheriff could have gone on under this execution and seized all the assets of the partnership which were seizable under the execution, but he could not seize book debts or good-will.

No seizure was, however, made by the sheriff thereunder of any specific assets of the partnership, and all the assets of the partnership were sold, realized and disposed of, and the male plaintiff lost any benefit which he might have derived from the seizure of any specific assets, of the partnership seizable under his execution, and the sale thereunder of the undivided interest of Hugo Block therein.

Then, as to the action of the female plaintiff. Her claim was under a bill of sale from the sheriff, which recited the placing of the execution of the male plaintiff in his hands, the seizure thereunder and under subsequent writs in his hands of all the undivided share and interest of Hugo Block exigible under execution in the partnership assets and business carried on by Reid, Taylor and Bayne, the offering of the same for sale, the return of one of the subsequent writs "goods on hand for want of buyers to the value of \$30," the receipt by him of a writ of *venditioni exponas* upon the said return, and the sale thereunder to the female plaintiff for the sum of \$30, and by which the sheriff granted, bargained and sold unto the female plaintiff "all the said undivided share or interest of the defendant Hugo Block exigible under execution in the partnership assets and business carried on by Reid, Taylor and Bayne."

Nothing passed to the female plaintiff by this sale.

What the sheriff should have done was to have seized specific assets of the partnership of Reid, Taylor and Bayne, seizable under execution, and to have sold the undivided interest of Hugo Block therein, but what he essayed to do was to seize and sell "the undivided share or interest of the defendant, Hugo Block, exigible under execution in the partnership assets and business carried on by Reid, Taylor and Bayne"; and this he could not do.

The law on this subject is very clearly laid down by LINDLEY, L. J., in *Helmores v. Smith* (1), 35 Ch. D. 436, 447, where he said: "A writ of *fi. fa.* was issued against one of two partners in the business of coal merchants. Let us consider what the sheriff could do under that *fi. fa.* He could seize all such of the assets of the firm as are seizable under a *fi. fa.*, but he could not seize the book debts or goodwill. The *fi. fa.* does not touch such things; and it is a mistake, and a very serious mistake, to suppose that when the sheriff, under a separate execution against one of several partners, seizes the partnership goods, and sells the share and interest of the execution debtor in those goods, the sheriff can or does in practice sell the whole of the execution debtor's interest in the partnership. Such a case is conceivable, but in practice it never arises, because there are always in practice assets which cannot be reached by a *fi. fa.* What the sheriff has got to sell is not the share and interest of the execution

debtor in the partnership, but the share and interest of the executor debtor in such of the chattels of the partnership as are seizable under a *fi. fa.* The unfortunate purchaser from the sheriff has to find out what he has really had assigned to him, and that he can only do by a partnership account; there is no other method of proceeding."

The appeal must be dismissed with costs.

OSLER, J. A.:—It appears to me that this appeal may be disposed of on a very short and simple ground.

The defendant, Hugo Block, was a partner (whether general or special, I think, is not material) in the firm of Reid, Taylor and Bayne, and his firm owed him, on the taking of an account between them, as his share or interest in the partnership, the sum of \$29,935.

On the 4th of February, 1896, he owed the defendants, the Quebec Bank, in respect of a past due debt, a sum exceeding that amount, and, by an instrument in writing of that date, he duly assigned the debt or claim or share so due to him by his partners to the bank, as security for his own debt to them.

An action had theretofore been brought by the plaintiff, John Rennie, against Block, in which the latter had recovered judgment, but in which, at the date of the assignment, an appeal was pending in the Supreme Court of Canada. The appeal was allowed on the 18th May, 1896, and a reference directed to take accounts between the parties in respect of the subject-matter of the action, and Rennie recovered judgment in the Supreme Court for the costs of his appeal throughout the various courts in which it had been heard, execution for which was lodged in the sheriff's hands on the 10th July, 1896. Under that execution the sheriff, without making any actual seizure of the partnership assets, purported to sell and convey to the plaintiff Margaret Rennie on the 18th October, 1896, by deed bearing that date, "all the undivided share or interest of the defendant, Hugo Block, exigible under execution in the partnership assets and business of Reid, Taylor and Bayne, in which firm the said Hugo Block is alleged to be a special partner." On the 10th November, 1898, this action was commenced by the plaintiff, Margaret Rennie, and her husband for the purpose of setting aside the assignment of the 4th February, 1896, as being fraudulent and void and made for purpose of defeating, delaying, and defrauding the creditors of the defendant, Hugo Block.

Apart from its alleged fraudulent character, it was also contended that the bank had no right in law to take the assignment, and that it was void under the provisions of secs. 68, 74 and 75 of the Banking Act, 53 Vict., ch. 31 (1890). And it was argued that, even if the security was one which the bank had power to

take, the assignment was incomplete and ineffectual as against the execution, notice thereof not having been given to the debtors, Reid, Taylor and Bayne, until the 28th July, 1896, after the writ under which the plaintiff makes title had been delivered to the sheriff.

That the plaintiff, Margaret Rennie, if the sale under the execution conferred upon her any interest in the property purported to be sold, would be in a position to attack the bank's title, if it were invalid under the provisions of the Bank Act, may be conceded upon the authority of *Bank of Toronto v. Perkins* (1883), 8 S. C. R. 603; *National Bank of Australasia v. Perkins* (1870), L. R. 3 P. C. 299; and other cases which might be referred to. There is, however, nothing that I am aware of in the Act which prohibits a bank from taking such security as that now in question for a debt which has been contracted to it in the course of its business. Section 68 forbids a bank to lend money or make advances, either directly or indirectly, upon a security, mortgage, or hypothec of any lands, tenements, or immovable property, or of any ships or other vessels, or upon the security of any goods, wares or merchandise; but, even if a debt can be considered as goods, wares or merchandise, within the meaning of this section, the bank did not advance its money, nor was Block's debt to it contracted, upon the security of the assignment. That debt had already been contracted (upon what security we do not know) when the assignment was taken, and it was so taken as only additional security therefor. That is expressly authorized by sec. 68. I refer to *Bank of Montreal v. McWhirter* (1867), 17 C. P. 506, 513; *Bank of Upper Canada v. Killaly* (1861), 21 U. C. R. 9, 15; and *In re Rainy Lake Lumber Co.* (1888), 15 A. R. 749.

As regards the absence of notice to the debtor of the assignment having been made, that is not material, as the assignment was made before the 31st December, 1897. Notice to the debtor is now required by sec. 57, sub-sec. 5, Ont. Jud. Act, for the purposes of, or to the extent required by, that section, but only in respect of "debts or other legal choses in action" made on or after that date.

Then, upon the merits of the case; whatever interest the plaintiff, Margaret Rennie, acquired by her purchase at the sheriff's sale under her husband's execution was clearly subject to the right of the bank under the assignment. Her contention is that the assignment is void against her under the Statute of Elizabeth, but there is, as the courts below have also held, an entire absence of evidence that it was made with intent to delay and defraud the execution creditor in his action against Block. It was made at the request of the bank and with the legitimate object of giving them the additional security they required.

I do not know on what ground John Rennie was made a party to the present action, as his wife, as the purchaser at the sale under the execution, is the only person now interested in getting rid of the assignment. Her action fails on the ground I have mentioned, and probably also on other grounds, into consideration of which I do not think it is necessary to enter.

The appeal should be dismissed with costs.

MACLENNAN and MOSS, JJ. A., concurred.

LISTER, J. A., died while the appeal was under consideration.

HIGH COURT OF JUSTICE OF ONTARIO

Boyd et al. v. Nasmith

The payees of a cheque took it to the Bank on which it was drawn on the afternoon of the day on which they received it from the drawer and got it marked "good," the amount being charged to the drawer's account. They then took it away without demanding payment. The Bank, on the evening of the same day, suspended payment, and on the following day, on presentation of the cheque payment was refused.

Held, that the drawer of the cheque was discharged from all liability thereon.

This action was tried before Street, J., without a jury, at Toronto, at the Spring Assizes of 1888.

The learned Judge reserved his decision and afterwards delivered the following judgment:

May 14, 1888, STREET, J.—The plaintiffs are solicitors practising in Toronto. On the 15th November, 1887, the defendant completed the purchase from a client of the plaintiffs of a piece of land in Toronto, and gave the plaintiffs in payment his cheque for \$2,500 on the Central Bank of Canada, Toronto. Between two and three o'clock on the same day the plaintiffs presented the cheque at the Central Bank, and at their request it was marked "good," and offered to the Canadian Bank of Commerce by the plaintiffs, at a few minutes before three o'clock, as part of a deposit which they were making there. The Canadian Bank of Commerce refused to receive the cheque, and upon the same afternoon, at five o'clock, the Central Bank, which had continued to pay up to that time, closed its doors, and suspended payment. At the time of making the cheque the clerk of the Central Bank, who had marked it, charged the amount of it to the defendant's account in the bank ledger in accordance with the usual custom of the bank when cheques are marked "good."

On the 16th November the plaintiffs presented the cheque at the office of the Central Bank for payment, but payment was refused because the bank had then suspended; and the cheque was protested for non-payment.

The question in the present case is, whether the defendant is liable either upon the original consideration (supposing the right to recover it to have become vested in the plaintiffs), or upon the cheque; and I am of opinion that he is not.

The original consideration cannot be resorted to under the circumstances, unless the contract of the defendant, the drawer of the cheque, has been broken. There was an implied contract between him and the payee, when the payee took the cheque, that the bankers would pay it forthwith upon demand, if it were presented within a reasonable time. It was the duty of the payee to present it for payment within a reasonable time, which the law has fixed as being not later than during the banking hours upon the following day.* The duty of the bankers, as between themselves and the drawer, was to pay the amount of the cheque upon presentation, because they had in their hands funds to meet it. The payee had no right, as between himself and the drawer, to present the cheque for any other purpose than payment. He was not bound to present it until the following day, and had he not presented it until then, the drawer would have been liable; but he chose to present it the same day, and, instead of payment, to take the bankers' undertaking to pay upon a further presentation. By doing so he had discharged the drawer, in my opinion. There has been no breaking of the drawer's implied contract. The banker was ready and willing to pay the cheque when it was presented, and the drawer's undertaking was satisfied, and the cheque was honoured when it was presented under those circumstances. When it was presented upon the following day payment must be taken to have been demanded not upon the drawer's original contract, but upon the promise to pay of the bankers which the plaintiffs had procured to be substituted for it.

It is argued that because payment was not demanded when it was first presented, therefore the cheque was not then presented for payment; but the payee had no right to present it except for payment; and the result of his having presented it was that the defendant was charged in the bank books with the amount of the cheque, and was prevented from withdrawing the funds at his credit on the books of the bank to the amount of the cheque.

I think the action must be dismissed, with costs.

See *Goodwin v. Roberts*, L. R. 10 Ex. 351, 352; *First National Bank of Jersey City v. Leach*, 52 N.Y. 350; Daniel on Negotiable Instruments, 3rd ed., secs. 1604, 1627, *et seq.*

An appeal from this decision was argued before the Common Pleas Division at the Easter and Michaelmas Sittings, 1888, and the judgment confirmed.

*The law on this point was modified somewhat by the Bills of Exchange 1890. See Sec. 45.

STATEMENT OF BANKS acting under Dominion Government charter for the months of February,
March and April, 1902, and comparison with April, 1901:

LIABILITIES

| | 28th Feb., 1902 | 31st Mar., 1902 | 31st April, 1902 | 30th April, 1901 |
|---|----------------------|----------------------|----------------------|----------------------|
| Capital authorized | \$ 77,126,666 | \$ 77,126,666 | \$ 77,126,666 | \$74,875,332 |
| Capital paid up | 68,041,136 | 68,406,624 | 68,474,523 | 66,819,010 |
| Reserve Fund | <u>37,567,753</u> | <u>37,571,793</u> | <u>38,665,523</u> | <u>35,405,456</u> |
| Notes in circulation | \$ 49,450,994 | \$ 52,442,982 | \$ 50,691,588 | \$ 47,006,701 |
| Dominion and Provincial Government deposits .. | 6,726,050 | 7,150,729 | 6,859,833 | 5,930,580 |
| Public deposits on demand in Canada | 94,864,660 | 92,380,118 | 99,210,543 | 92,907,158 |
| Public deposits after notice | 238,996,123 | 239,529,963 | 239,875,361 | 215,352,273 |
| Deposits elsewhere than in Canada | 29,839,213 | 30,112,520 | 32,067,736 | 22,706,825 |
| Loans from other banks in Canada, secured, including bills rediscounted | 661,374 | 626,063 | 659,015 | 1,372,693 |
| Deposits from and balances due other banks | 3,472,284 | 3,140,271 | 3,051,245 | 2,756,438 |
| Due to agencies of the bank and to other banks in United Kingdom | 3,337,960 | 6,423,912 | 6,529,954 | 4,482,774 |
| Due to agencies of the bank and to other banks else- where than in Canada and the United Kingdom | 976,519 | 1,188,116 | 672,895 | 912,217 |
| Other liabilities | <u>9,709,421</u> | <u>7,501,583</u> | <u>8,708,267</u> | <u>7,374,465</u> |
| Total liabilities | <u>\$438,035,270</u> | <u>\$440,496,328</u> | <u>\$448,326,515</u> | <u>\$400,802,203</u> |

ASSETS

| | | | | |
|---|--------------|--------------|--------------|--------------|
| Specie | \$11,498,021 | \$12,261,266 | \$12,919,711 | \$11,819,200 |
| Dominion notes | 22,156,454 | 21,073,020 | 21,339,692 | 19,944,669 |
| Deposits to secure note circulation | 2,569,513 | 2,569,513 | 2,569,513 | 2,402,973 |
| Notes and cheques on other banks | 13,374,568 | 12,060,802 | 14,557,378 | 13,554,128 |
| Loans to other banks in Canada secured, including bills rediscounted | 659,847 | 686,063 | 659,015 | 1,342,692 |
| Due by other banks in Canada | 4,629,921 | 3,554,638 | 4,097,714 | 3,789,573 |
| Due from agencies of the bank and from other banks in United Kingdom | 7,105,453 | 3,152,353 | 3,763,348 | 4,149,055 |
| Due from agencies and from other banks elsewhere than in Canada and the United Kingdom | 11,796,698 | 11,890,626 | 12,547,160 | 10,493,659 |
| Dominion and Provincial Government securities .. | 9,961,510 | 10,201,350 | 10,192,068 | 12,054,654 |
| Canadian municipal securities, and British or foreign or colonial public securities other than Canadian Railway and other bonds, debentures and stocks .. | 13,496,008 | 14,052,508 | 14,206,137 | 11,622,810 |
| Call and short loans on stocks and bonds in Canada .. | 33,949,704 | 34,329,610 | 33,405,895 | 28,293,006 |
| Call and short loans elsewhere than in Canada | 36,550,397 | 38,532,304 | 39,503,535 | 32,617,029 |
| Current loans in Canada | 44,212,911 | 44,286,316 | 43,020,869 | 35,449,302 |
| Current loans elsewhere than in Canada | 292,059,778 | 300,066,698 | 302,160,867 | 284,251,292 |
| Loans to Dominion and Provincial Governments .. | 26,229,854 | 27,776,895 | 28,737,195 | 19,094,852 |
| Overdue debts | 3,212,879 | 3,668,618 | 4,245,762 | 3,496,053 |
| Real estate | 2,261,512 | 2,638,527 | 2,280,883 | 1,940,336 |
| Mortgages on real estate sold | 970,412 | 988,998 | 943,945 | 1,053,802 |
| Bank premises | 721,000 | 712,277 | 736,473 | 618,081 |
| Other assets | 6,785,754 | 6,812,417 | 6,911,171 | 6,563,202 |
| | 7,426,747 | 5,586,421 | 5,777,745 | 6,119,055 |
| Total assets | \$51,629,125 | \$55,690,406 | \$56,437,624 | \$51,569,603 |
| Loans to directors or their firms | \$11,217,473 | \$11,403,951 | \$9,822,350 | \$12,062,084 |
| Average amount of specie held during the month .. | 11,713,115 | 11,780,464 | 12,290,099 | 11,870,296 |
| Average Dominion notes held during the month .. | 21,964,715 | 21,467,019 | 21,410,069 | 19,892,376 |
| Greatest amount of notes in circulation during month | 50,283,248 | 52,799,820 | 53,221,681 | 49,549,246 |

MONTHLY TOTALS OF BANK CLEARINGS at the cities of Montreal, Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver and Victoria.

(ooo omitted)

| | MONTREAL | | TORONTO | | HALIFAX | | HAMILTON | |
|------------|----------|---------|---------|---------|---------|---------|----------|---------|
| | 1900-01 | 1901-02 | 1900-01 | 1901-02 | 1900-01 | 1901-02 | 1900-01 | 1901-02 |
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| June | 65,543 | 79,746 | 44,545 | 50,697 | 6,187 | 7,047 | 3,342 | 3,112 |
| July | 61,293 | 80,198 | 44,400 | 52,867 | 7,184 | 8,618 | 3,194 | 3,555 |
| August .. | 58,229 | 71,723 | 37,075 | 49,253 | 7,162 | 8,421 | 3,035 | 3,149 |
| September | 57,686 | 73,368 | 38,933 | 51,828 | 6,351 | 6,681 | 3,176 | 3,173 |
| October .. | 65,983 | 78,250 | 47,246 | 53,983 | 6,920 | 7,250 | 3,642 | 4,445 |
| November | 68,656 | 85,581 | 47,550 | 54,957 | 6,921 | 7,572 | 3,481 | 3,736 |
| December | 63,311 | 75,141 | 48,325 | 60,687 | 6,946 | 8,429 | 3,842 | 3,824 |
| January .. | 71,115 | 76,995 | 54,299 | 64,211 | 7,359 | 8,440 | 3,684 | 3,832 |
| February . | 51,138 | 74,009 | 41,946 | 54,128 | 6,116 | 6,683 | 2,922 | 3,171 |
| March ... | 69,580 | 79,989 | 50,062 | 60,530 | 6,191 | 6,570 | 3,398 | 3,339 |
| April | 69,132 | 106,427 | 49,079 | 83,057 | 6,923 | 8,004 | 3,519 | 4,212 |
| May | 84,507 | 101,028 | 55,608 | 74,662 | 6,549 | 7,830 | 4,031 | 3,840 |
| | 786,173 | 982,455 | 559,068 | 710,860 | 80,809 | 91,545 | 41,266 | 43,388 |

| | WINNIPEG | | ST. JOHN | | VANCOUVER | | VICTORIA | |
|------------|----------|---------|----------|---------|-----------|---------|----------|---------|
| | 1900-01 | 1901-02 | 1900-01 | 1901-02 | 1900-01 | 1901-02 | 1900-01 | 1901-02 |
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | \$ |
| June..... | 9,612 | 8,547 | 2,978 | 3,364 | 3,843 | 4,058 | 2,758 | 2,746 |
| July..... | 9,395 | 9,213 | 3,468 | 3,890 | 4,286 | 4,610 | 2,986 | 2,806 |
| August.... | 8,173 | 9,324 | 3,561 | 3,805 | 4,391 | 4,498 | 2,875 | 2,441 |
| September | 7,320 | 10,314 | 3,340 | 3,394 | 4,301 | 4,215 | 2,639 | 2,133 |
| October .. | 9,183 | 15,174 | 3,362 | 3,905 | 4,956 | 4,948 | 3,070 | 2,772 |
| November | 11,618 | 21,532 | 3,115 | 3,296 | 4,008 | 4,402 | 3,151 | 2,516 |
| December | 10,869 | 19,155 | 3,213 | 3,611 | 3,686 | 3,848 | 2,443 | 2,169 |
| January .. | 9,623 | 14,363 | 3,092 | 3,236 | 3,369 | 3,847 | 3,257 | 2,783 |
| February . | 7,158 | 10,067 | 2,742 | 2,915 | 2,674 | 3,228 | 2,181 | 1,925 |
| March ... | 7,839 | 10,706 | 2,860 | 2,659 | 3,196 | 3,215 | 2,243 | 1,830 |
| April | 7,634 | 13,199 | 3,060 | 3,430 | 3,511 | 3,750 | 2,570 | 2,228 |
| May | 8,681 | 13,912 | 3,341 | 3,229 | 3,673 | 5,056 | 2,962 | 2,725 |
| | 107,105 | 155,506 | 38,132 | 40,734 | 45,894 | 49,675 | 33,135 | 29,071 |

UNREVISED FOREIGN TRADE RETURNS, CANADA

(ooo omitted)

IMPORTS

| <i>Eight months ending February—</i> | | 1900-1901 | | 1901-1902 | |
|--------------------------------------|--|------------------|------------------|------------------|------------------|
| Free | | \$ 46,122 | | \$ 49,342 | |
| Dutiable | | 68,365 | | 74,369 | |
| | | <u>\$114,487</u> | | <u>\$123,711</u> | |
| Bullion and coin | | 3,267 | \$117,754 | 4,564 | \$128,275 |
| <i>Month of March—</i> | | | | | |
| Free | | \$ 4,889 | | \$ 5,845 | |
| Dutiable | | 9,636 | | 11,177 | |
| | | <u>\$ 14,525</u> | | <u>\$ 17,022</u> | |
| Bullion and Coin | | 61 | \$ 14,586 | 107 | \$ 17,129 |
| <i>Month of April—</i> | | | | | |
| Free | | \$ 5,523 | | \$ 7,220 | |
| Dutiable | | 8,407 | | 9,827 | |
| | | <u>\$ 13,930</u> | | <u>\$ 17,047</u> | |
| Bullion and Coin | | 69 | \$ 13,999 | 58 | \$ 17,105 |
| Total for ten months | | | <u>\$146,339</u> | | <u>\$162,509</u> |

EXPORTS

| <i>Eight months ending February—</i> | | | | | |
|--------------------------------------|------------------|-----------|--|------------------|-----------|
| Products of the mine | \$27,147 | | | \$ 24,617 | |
| " Fisheries | 7,968 | | | 10798 | |
| " Forest | 21,053 | | | 22,240 | |
| Animals and their produce | 42,754 | | | 44,204 | |
| Agricultural produce | 17,463 | | | 21,891 | |
| Manufactures | 10,199 | | | 11,425 | |
| Miscellaneous | 43 | | | 25 | |
| | <u>\$126,627</u> | | | <u>\$135,200</u> | |
| Bullion and Coin | 1,161 | \$127,788 | | 1,539 | \$136,739 |
| <i>Month of March—</i> | | | | | |
| Products of the mine | \$ 1,533 | | | \$ 1,482 | |
| " Fisheries | 425 | | | 607 | |
| " Forest | 850 | | | 905 | |
| Animals and their produce | 2,790 | | | 2,785 | |
| Agricultural produce | 2,178 | | | 2,187 | |
| Manufactures | 1,206 | | | 1,376 | |
| Miscellaneous | .. | | | 5 | |
| | <u>\$ 8 982</u> | | | <u>\$ 9,347</u> | |
| Bullion and Coin | 161 | \$ 9,143 | | 41 | \$ 9,388 |

Month of April—

| | | | | |
|---------------------------------|-----------------|------------------|------------------|------------------|
| Products of the mine..... | \$ 1,622 | | \$ 1,677 | |
| " Fisheries..... | 272 | | 671 | |
| " Forest | 1,163 | | 1,371 | |
| Animals and their produce | 2,756 | | 3,061 | |
| Agricultural produce..... | 1,808 | | 5,085 | |
| Manufactures | 1,429 | | 1,778 | |
| Miscellaneous..... | .. | | .. | |
| | <u>\$ 9,050</u> | | <u>\$ 13,643</u> | |
| Bullion and Coin | 180 | \$ 9,230 | 38 | \$ 13,681 |
| Total for ten months | | <u>\$146,161</u> | | <u>\$159,808</u> |

SUMMARY (in dollars)

For ten months—

| | | |
|--|---------------------|-------------------|
| | 1900-1901 | 1901-1902 |
| Total imports, other than bullion and coin.. | \$142,942,000 | \$157,780,000 |
| Total exports, other than bullion and coin.. | 144,659,000 | 158,190,000 |
| Excess | (Exp.) \$ 1,717,000 | (Exp.) \$ 410,000 |
| Bullion and coin, net | (Imp.) 1,897,000 | (Imp.) 3,111,000 |

CANADIAN BANKERS' ASSOCIATION

LIST OF ASSOCIATES

| | |
|-----------------------|-------------------------------|
| Abbott, C. C..... | Bank of Montreal |
| Abbott, J. H..... | Royal Bank of Canada |
| Abernethy, A. C. | Bank of British North America |
| Acker, C. E. | Peoples Bank of Halifax |
| Acres, J. J..... | Canadian Bank of Commerce |
| Adair, John | Canadian Bank of Commerce |
| Adam, G. G. | Ontario Bank |
| Adams, James H..... | Merchants Bank of Canada |
| Aird, James | Bank of Montreal |
| Aird, John .. | Canadian Bank of Commerce |
| Aitken, R. A. E..... | Peoples Bank of Halifax |
| Allan, Andrew | Halifax Banking Company |
| Allan, J. E..... | Union Bank of Halifax |
| Allan, W. A. | Merchants Bank of Canada |
| Alley, J. A. M. | Traders Bank of Canada |
| Ambridge, H A..... | Molsons Bank |
| Ambrose, H. S..... | Bank of Montreal |
| Ambrose, J. R. | Bank of British North America |
| Ambrose, W. J..... | Bank of Montreal |
| Anderson, D..... | Union Bank of Canada |
| Anderson, F. | Boyal Bank of Canada |
| Anderson, J. | Bank of British North America |
| Anderson, J. | Union Bank of Canada |
| Anderson, J. J. ... | Union Bank of Canada |
| Anderson, M. A. | Imperial Bank of Canada |
| Anderson, P. A..... | Bank of Montreal |
| Anderson, R. H. ... | Bank of Nova Scotia |
| Anderson, W. J..... | Bank of Montreal |
| Andrews, Ernest ... | Canadian Bank of Commerce |
| Andros, E. B..... | Bank of Toronto |
| Angus, A. F. | Bank of Montreal |
| Angus, Jas. A..... | Bank of Montreal |
| Archibald, H. H. | Halifax Banking Company |
| Arkell, R. | Imperial Bank of Canada |
| Armstrong, C. A. | Commercial Bank of Windsor |
| Armstrong, C. R. | Canadian Bank of Commerce |
| Armstrong, W. C..... | Dominion Bank |
| Arnaud, E. D..... | Union Bank of Halifax |
| Arnaud, F. H..... | Royal Bank of Canada |
| Arnaud, H. M..... | Imperial Bank of Canada |
| Arnold, C. M..... | Imperial Bank of Canada |
| Ashe, F. W..... | Union Bank of Canada |

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| Atkinson, A. A | Canadian Bank of Commerce |
| Atkinson, M | Bank of Toronto |
| Audet, J. I..... | Banque Nationale |
| Austin, Benj..... | Eastern Townships Bank |
| Austin, H. L. G..... | Bank of British North America |
| Bailey, A. U | Union Bank of Canada |
| Baker, F. S | Imperial Bank of Canada |
| Baker, P. C | Eastern Townships Bank |
| Balcer, Leon G..... | Quebec Bank |
| Baldwin, G. S. G | Dominion Bank |
| Baldwin, J. M | Union Bank of Canada |
| Balfour, G. H..... | Union Bank of Canada |
| Ball, Wm. Lee | Eastern Townships Bank |
| Bancroft, W. M..... | Bank of Montreal |
| Banfield, J. W..... | Royal Bank of Canada |
| Bangs, John A..... | Bank of Ottawa |
| Banks, D. W..... | Union Bank of Canada |
| Barnhardt, R..... | Molsons Bank |
| Barnum, J. L..... | Canadian Bank of Commerce |
| Barrow, R. S..... | Union Bank of Canada |
| Barry, J. F..... | Royal Bank of Canada |
| Bartlett, C..... | Bank of Hamilton |
| Bartlett, C. H..... | Bank of Hamilton |
| Bate, C. F..... | Merchants Bank of Canada |
| Bate, E. N..... | Imperial Bank of Canada |
| Baxter, W. C..... | Merchants Bank of Canada |
| Bayly, N. | Bank of British North America |
| Beach, W. G | Merchants Bank of Canada |
| Beaumier, H..... | Banque d'Hochelaga |
| Begg, E. A..... | Dominion Bank |
| Begg, H. T... .. | Bank of Nova Scotia |
| Begg, Wm. M. | Bank of Toronto |
| Belcher, J. T | Molsons Bank |
| Bell, F. W..... | Merchants Bank of Canada |
| Bell, G. S. | Ontario Bank |
| Bell, J. P. | Bank of Hamilton |
| Bell, W. | Imperial Bank of Canada |
| Bellhouse, G. Y... .. | Bank of British North America |
| Bellhouse, Wm. A..... | Merchants Bank of Canada |
| Belt, H. R..... | Merchants Bank of Canada |
| Belt, W. G. H..... | Bank of British North America |
| Benedict, C. L. | Bank of Montreal |
| Bennett, A. E. | Merchants Bank of Canada |
| Bennett, F. B. .. | Traders Bank of Canada |
| Benson, J. H. D. | Imperial Bank of Canada |
| Benson, J. J. | Bank of Montreal |
| Bently, H. L..... | Union Bank of Halifax |
| Berford, W. R. | Bank of Ottawa |
| Berlingnet, R. F. | Quebec Bank |
| Bertrand, E. A..... | Bank d'Hochelaga |
| Bethune, F. A. | Molsons Bank |
| Bethune, H. J. | Dominion Bank |

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| Bickerdike, R. | Banque d'Hochelaga |
| Biette, F. | Western Bank of Canada |
| Bignell, A. E. | Merchants Bank of Canada |
| Billett, J. Glanville | Union Bank of Canada |
| Billings, C. C. | Bank of Ottawa |
| Billingsley, F. C. | Quebec Bank |
| Bingay, T. Van B. | Exchange Bank of Yarmouth |
| Bingham, H. P. | Merchants Bank of Canada |
| Birchall, A. S. | Royal Bank of Canada |
| Bird, E. H. | Canadian Bank of Commerce |
| Bird, J. Godfrey | Bank of Toronto |
| Bird, T. A. | Bank of Toronto |
| Birely, W. R. | Bank of Hamilton |
| Bishop, A. G. | Royal Bank of Canada |
| Black, John | Bank of Nova Scotia |
| Blagdon, J. F. | Royal Bank of Canada |
| Blakeney, H. | Merchants Bank of Canada |
| Blanchard, E. R. | Banque de St. Hyacinthe |
| Blomfield, F. C. | Bank of Montreal |
| Boddy, W. C. | Standard Bank of Canada |
| Bogert, C. A. | Dominion Bank |
| Bogert, M. S. | Dominion Bank |
| Boire, H. N. | Banque d'Hochelaga |
| Bonner, G. W. G. | Bank of British North America |
| Booker, N. | Traders Bank of Canada |
| Borbridge, F. | Bank of Ottawa |
| Boright, G. C. | Eastern Townships Bank |
| Boudreau, J. B. A. | Molsons Bank |
| Boulais, J. F. | Banque d' Hochelaga |
| Boulton, E. K. | Imperial Bank of Canada |
| Boulton, F. J. | Union Bank of Canada |
| Boulton, G. D. | Imperial Bank of Canada |
| Bourinot, E. W. | Union Bank of Canada |
| Bourne, G. G. | Canadian Bank of Commerce |
| Bowker, E. C. | Dominion Bank |
| Bowles, Geo. | Union Bank of Canada |
| Bowser, A. | Royal Bank of Canada |
| Boyd, B. C. Barclay. | Bank of New Brunswick |
| Boyer, A. | Molsons Bank |
| Boyle, J. A. | Imperial Bank of Canada |
| Bradley, R. A. | Peoples Bank of Halifax |
| Braithwaite, A. D. | Bank of Montreal |
| Bredin, R. S. | Ontario Bank |
| Breedon, H. M. | Bank British North America |
| Brewer, H. C. | Molsons Bank |
| Brock, A. E. | Royal Bank of Canada |
| Brock, H. B. | Bank of British North America |
| Brock, W. F. | Royal Bank of Canada |
| Broderick, A. T. | Union Bank of Canada |
| Brodie, F. A. | Bank of Toronto |
| Brodie, J. K. | Standard Bank of Canada |
| Brodrick, A. B. | Molsons Bank |
| Brodrick, P. W. D. | Molsons Bank |

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| Brookes, John | Bank of British North America |
| Brotherhood, R. H..... | Canadian Bank of Commerce |
| Brough, John M. | Halifax Banking Company |
| Brough, T. G..... | Dominion Bank |
| Brown, G. C..... | Imperial Bank of Canada |
| Brown, J..... | Ontario Bank |
| Brown, Vere C..... | Canadian Bank of Commerce |
| Brown, W. E..... | Dominion Bank |
| Browne, W. G | Canadian Bank of Commerce |
| Bruneau, A..... | Banque d'Hochelaga |
| Brunel, E. | Banque Provinciale du Canada |
| Bruskey, F. A. | Merchants Bank of Canada |
| Brydon, James | Canadian Bank of Commerce |
| Brymner, R. T. | Canadian Bank of Commerce |
| Buchan, E..... | Bank of Hamilton |
| Buchan, J. L..... | Canadian Bank of Commerce |
| Buchanan, H. E. | Merchants Bank of Canada |
| Burchell, A. S. | Royal Bank of Canada |
| Burchell, John E. | Royal Bank of Canada |
| Burn, Geo..... | Bank of Ottawa |
| Burns, G. H..... | Bank of British North America |
| Burns, H. D..... | Bank of Nova Scotia |
| Burns, W. H..... | Bank of Hamilton |
| Burnside, A. J. | Canadian Bank of Commerce |
| Burrows, N. R..... | Union Bank of Halifax |
| Burrows, W. A..... | Merchants Bank of Canada |
| Butler, W. E..... | Merchants Bank of Canada |
| Butt, H. H. | Bank of British North America |
| Butterfield, J..... | Bank of Hamilton |
| Byres, G. Martin | Ontario Bank |
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| Caldwell, R. B..... | Ontario Bank |
| Caldwell, W. | Bank of Nova Scotia |
| Cameron, Duncan..... | Royal Bank of Canada |
| Cameron, D. A..... | Canadian Bank of Commerce |
| Cameron, F. G. D. | Royal Bank of Canada |
| Cameron, J. W..... | Union Bank of Halifax |
| Campbell, A. G..... | Eastern Townships Bank |
| Campbell, A. J. D. | Bank of British North America |
| Campbell, A. M. | Merchants Bank of Canada |
| Campbell, E. A..... | Bank of Hamilton |
| Campbell, J. E..... | Banque de St. Hyacinthe |
| Campbell, J. H..... | Molsons Bank |
| Campbell, P..... | Bank of Toronto |
| Cant, Joseph..... | Bank of British North America |
| Capreol, A. R. | Imperial Bank of Canada |
| Carlisle, Thos..... | Molsons Bank |
| Carmichael, F..... | Bank of Montreal |
| Carmichael, J. A. O..... | Canadian Bank of Commerce |
| Carnegie, B. G | Canadian Bank of Commerce |
| Carr, Arthur J | Bank of British North America |
| Carriere, J | Bank of Ottawa |
| Carruthers, Geo | Merchants Bank of Canada |

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| Carswell, W. E..... | Dominion Bank |
| Carter, B. B..... | Union Bank of Canada |
| Carter, E. H..... | Canadian Bank of Commerce |
| Carter, J. H..... | Canadian Bank of Commerce |
| Cassels, D. S..... | Bank of Hamilton |
| Cassels, L. G..... | Dominion Bank |
| Cassels, R..... | Canadian Bank of Commerce |
| Cattanach, W. G..... | Bank of British North America |
| Chadwick, E. A..... | Imperial Bank of Canada |
| Chalmers, M. C..... | Traders Bank of Canada |
| Chandler, W. M..... | Canadian Bank of Commerce |
| Chapman, A. B..... | Bank of British North America |
| Chapman, J. R..... | Bank of British North America |
| Charles, D. H..... | Canadian Bank of Commerce |
| Checkley, E. R..... | Merchants Bank of Canada |
| Chester, A..... | Merchants Bank of Canada |
| Chipman, W. W. L..... | Molsons Bank |
| Chisholm, T. A..... | Canadian Bank of Commerce |
| Chisholm, W. S..... | Merchants Bank of Canada |
| Christie, A. E..... | Union Bank of Canada |
| Christie, J. M..... | Canadian Bank of Commerce |
| Christie, T. N..... | Union Bank of Canada |
| Christie, W. J..... | Bank of Ottawa |
| Clark, A..... | Imperial Bank of Canada |
| Clark, D. B..... | Bank of British North America |
| Clark, R..... | Bank of Montreal |
| Clark, R. S..... | Imperial Bank of Canada |
| Clarke, C. H. Stanley..... | Imperial Bank of Canada |
| Clarke, J. L..... | Merchants Bank of Canada |
| Clawson, J..... | Bank of New Brunswick |
| Clinch, C. W..... | Molsons Bank |
| Clouston, E. S..... | Bank of Montreal |
| Clouston, W. S..... | Bank of Montreal |
| Cochran, E. J..... | People's Bank of Halifax |
| Cockburn, F. J..... | Bank of Montreal |
| Codd, Selby..... | Bank of Ottawa |
| Coffin, T. C..... | Quebec Bank |
| Cole, Francis..... | Bank of Ottawa |
| Coleman, H. J..... | Traders Bank of Canada |
| Collard, W. H..... | Imperial Bank of Canada |
| Colson, H. A..... | Ontario Bank |
| Connolly, W. S..... | Molsons Bank |
| Conolly, R. G. W..... | Canadian Bank of Commerce |
| Cooke, C. H. S..... | Merchants Bank of Canada |
| Cooke, Wm..... | Merchants Bank of Canada |
| Cooke, W. A..... | Canadian Bank of Commerce |
| Coombs, E. G..... | People's Bank of Halifax |
| Cooper, W. F..... | Bank of Toronto |
| Cooper, W. J..... | Merchants Bank of Canada |
| Copeland, W. A..... | Bank of Toronto |
| Côté, J. E..... | Banque Nationale |
| Couet, A. E..... | Banque Nationale |
| Couët, L..... | Banque Nationale |

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|------------------------|-------------------------------|
| Coulson, D..... | Bank of Toronto |
| Counsell, R. R..... | Imperial Bank of Canada |
| Cowan, W. L..... | Bank of Ottawa |
| Cowdry, E..... | Canadian Bank of Commerce |
| Cowie, A. G..... | Bank of British North America |
| Craig, F. L..... | Imperial Bank of Canada |
| Craig H. J..... | Western Bank of Canada |
| Craig, Will..... | Bank of Toronto |
| Cran J..... | Bank of British North America |
| Crane, John..... | Ontario Bank |
| Crawford, F. L..... | Canadian Bank of Commerce |
| Creelman, A..... | Imperial Bank of Canada |
| Creighton, B. R..... | Standard Bank of Canada |
| Creighton, J. S..... | People's Bank of Halifax |
| Crispo, F. W. S..... | Union Bank of Canada |
| Crombie, D. B..... | Quebec Bank |
| Crombie, R. B..... | Bank of Montreal |
| Crompton, R. W..... | Canadian Bank of Commerce |
| Crosbie, C. A..... | Royal Bank of Canada |
| Cross, F. O..... | Canadian Bank of Commerce |
| Cross, J. K..... | Bank of Hamilton |
| Cross, Lionel F..... | Canadian Bank of Commerce |
| Cross, W. O. M..... | Merchants Bank of Canada |
| Crossley, F..... | Canadian Bank of Commerce |
| Crowdy, W. H..... | Royal Bank of Canada |
| Crump, P. A..... | Canadian Bank of Commerce |
| Cruthers, S..... | Union Bank of Canada |
| Cumberland, C. R..... | Bank of British North America |
| Cumberland, D..... | Bank of British North America |
| Currie, A. E..... | Canadian Bank of Commerce |
| Currie, R. S..... | Royal Bank of Canada |
| Curry, P. A..... | Commercial Bank of Windsor |
| Cuthbertson, G. J..... | Bank of Toronto |
| Daly, Simcoe M..... | Canadian Bank of Commerce |
| Dampier, L. H..... | Canadian Bank of Commerce |
| Daniels, Fred. J..... | Bank of Montreal |
| Davidson, H. R..... | Canadian Bank of Commerce |
| Davis, G. H..... | Bank of Toronto |
| Davis, R. B..... | Bank of Hamilton |
| Davis, R. G..... | Ontario Bank |
| Deacon, C. F..... | Bank of British North America |
| Deans, H. G. P..... | Bank of British North America |
| DeGuise, L..... | Banque Nationale |
| DeJean, F. W. B..... | Molsons Bank |
| Delmage, A. C. E..... | Merchants Bank of Canada |
| Demers, J. E..... | People's Bank of Canada |
| DeMille, F. W..... | Halifax Banking Company |
| Denison, E. O..... | Union Bank of Canada |
| Dessaulles, G. C..... | Banque de St. Hyacinthe |
| De Veber Boies..... | Halifax Banking Company |
| Dewar, D. B..... | Canadian Bank of Commerce |
| Dewar, K. F..... | Bank of Hamilton |

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| Dewart, E. R..... | Canadian Bank of Commerce |
| Dick, John M. | Bank of New Brunswick |
| Dick, William | Bank of Montreal |
| Dickie, M..... | Royal Bank of Canada |
| Dickins, A. H. | Bank of Ottawa |
| Dickinson, C..... | Canadian Bank of Commerce |
| Dickinson, H. S. | Bank of Toronto |
| Dickinson, W. H. | Bank of Ottawa |
| Dickinson, Wm..... | Royal Bank of Canada |
| Dimock, R. V..... | Royal Bank of Canada |
| Dinning, N..... | Eastern Townships Bank |
| Dixon, F. J..... | Bank of British North America |
| Dobell, E. C..... | Bank of Montreal |
| Dodds, J..... | Bank of British North America |
| Dodge, L. A. | Commercial Bank of Windsor |
| Donaldson, A. P. S. | Merchants Bank of Canada |
| Doner, W. A..... | Bank of Toronto |
| Dowler, C. E. A..... | Commercial National Bank |
| Downie, D. H..... | Canadian Bank of Commerce |
| Draper, W. H..... | Molsons Bank |
| Dromgole, E. R. | Merchants Bank of Canada |
| Drouin, L. | Banque Nationale |
| Drummond, Geo..... | Bank of Montreal |
| Duff, J. M..... | Canadian Bank of Commerce |
| Duffus, J. B. | Bank of British North America |
| Dufresne, J. M..... | Banque Nationale |
| Dumoulin, P. B..... | Molsons Bank |
| Duncan, J. F..... | Canadian Bank of Commerce |
| Dunnet, A. G..... | Bank of Ottawa |
| Dunsford, C. R. | Union Bank of Canada |
| Dunsford, W. H. | Canadian Bank of Commerce |
| Dupuy, H. S. | Bank of Montreal |
| Durnford, A. D..... | Molsons Bank |
| Dusault, J. H. | Banque Nationale |
| Duthie, E. | Bank of Montreal |
| Dykes, P. | Merchants Bank of Canada |
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| Earle, Ernest A. | Royal Bank of Canada |
| Easson, C. H..... | Bank of Nova Scotia |
| Easton, Geo. C..... | Imperial Bank of Canada |
| Eckardt, H. M. P..... | Merchants Bank of Canada |
| Eddis, J. H. | Imperial Bank of Canada |
| Edwards, J. B. | Bank of Toronto |
| Eliot, James | Molsons Bank |
| Eliot, W. L. | Bank of Montreal |
| Ellerton, C. E. D..... | Bank of British North America |
| Elliott, H. C. | Bank of Ottawa |
| Elliott, John | Standard Bank of Canada |
| Elliott, R..... | Molsons Bank |
| Elliott, R. W. | Union Bank of Halifax |
| Ellis, A. E..... | Bank of British North America |
| Ellis, Robt. L. | Bank of British North America |
| Elmsly, J. | Bank of British North America |

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| Embury, W. | Merchants Bank of Canada |
| Eminson, R. H..... | Bank of British North America |
| Ervin, Chas. K..... | Royal Bank of Canada |
| Evans, H. P. D..... | Molsons Bank |
| Evans, Norman..... | Dominion Bank |
| Evans, R. G. H..... | Ontario Bank |
| Farwell, Wm..... | Eastern Townships Bank |
| Faucher, J. D..... | Quebec Bank |
| Fee, Jas. L..... | Bank of Toronto |
| Fellowes, C. D..... | Dominion Bank |
| Fenton, T. R..... | Imperial Bank of Canada |
| Ferguson, B. T..... | Bank of Toronto |
| Ferguson, D. A. | Molsons Bank |
| Ferguson, E. A. | Bank of Toronto |
| Ferguson, J. H..... | Royal Bank of Canada |
| Fewings, E. J. | Merchants Bank of Canada |
| Fidler, J. E. | Molsons Bank |
| Finnie, D. M..... | Bank of Ottawa |
| Finnis, Charles..... | Bank of British North America |
| Finucane, W. J..... | Merchants Bank of Canada |
| Finucane, F. J..... | Bank of Montreal |
| Fisher, Guy A. | Union Bank of Canada |
| Fisher, Henry G. | Bank of Montreal |
| Fisher, W. H. | Canadian Bank of Commerce |
| Fitton, H. W..... | Canadian Bank of Commerce |
| Flemming, H. A. | Bank of Nova Scotia |
| Foote, T. M. | Canadian Bank of Commerce |
| Forbes, D. J..... | Halifax Banking Company |
| Forrest, G. E..... | Eastern Townships Bank |
| Forrest, H. F. | Union Bank of Canada |
| Forrest, S. L..... | Bank of Ottawa |
| Forrest, W. W..... | Bank of Ottawa |
| Forrester, R. W..... | Royal Bank of Canada |
| Forsayeth, B..... | Bank of Hamilton |
| Forster, J. A..... | Imperial Bank of Canada |
| Fortier, S..... | Banque d'Hochelaga |
| Fosbrooke, P. R. B..... | Molsons Bank |
| Foster, C. L..... | Canadian Bank of Commerce |
| Foster, G. C..... | Imperial Bank of Canada |
| Fowler, E. B..... | Bank of Toronto |
| Fox, Chas. J..... | Western Bank of Canada |
| Fox, Ernest A..... | Canadian Bank of Commerce |
| Fox, James W..... | Bank of Montreal |
| Francis, F. B..... | Canadian Bank of Commerce |
| Fraser, A. B..... | Bank of Montreal |
| Fraser, A. C..... | Merchants Bank of Canada |
| Fraser, Hector..... | Bank of Ottawa |
| Fraser, J. S. C..... | Bank of Montreal |
| Fraser, J. M..... | Canadian Bank of Commerce |
| Fraser, M. D..... | Merchants Bank of Canada |
| Frawley, Jas. M..... | Bank of Toronto |
| Freeman, C. D..... | Bank of Nova Scotia |

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| Frizzle, J. R | Union Bank of Halifax |
| Fuller, E. H | Bank of Toronto |
| Fulton, J. W..... | Royal Bank of Canada |
| Fulton, R. H..... | Sovereign Bank of Canada |
| Futcher, A. C. | Royal Bank of Canada |
| Fyshe, Thos | Merchants Bank of Canada |
| Gagnon, Jos | Banque Nationale |
| Galbraith, R. S..... | Imperial Bank of Canada |
| Galletly, A. J. C. | Bank of Montreal |
| Galloway, J. J. | Merchants Bank of Canada |
| Gardiner, H. J..... | Royal Bank of Canada |
| Garrett, B | Sovereign Bank of Canada |
| Gauthier, J. N. | Banque de St. Jean |
| Gerrard, Geo. B. | Bank of British North America |
| Gibb, J. S..... | Imperial Bank of Canada |
| Gibbs, G. M..... | Canadian Bank of Commerce |
| Gibson, F. M..... | Canadian Bank of Commerce |
| Gibson, W. L..... | Canadian Bank of Commerce |
| Gilbert, M. A..... | Imperial Bank of Canada |
| Gill, Robert | Canadian Bank of Commerce |
| Gillard, J. H..... | Bank of British North America |
| Gilleland, L. J..... | Traders Bank of Canada |
| Gillespie, G. | Canadian Bank of Commerce |
| Gilmour, H. H..... | Molsons Bank |
| Giroux, C. A..... | Banque d'Hochelaga |
| Girvan, H. E..... | Royal Bank of Canada |
| Girvan, Samuel..... | Bank of New Brunswick |
| Glency, E. G..... | Ontario Bank |
| Glennie, G. G. | Bank of Nova Scotia |
| Godfrey, W. | Bank of British North America |
| Godwin, C. B..... | Quebec Bank |
| Gomery, B. V. | Molsons Bank |
| Gomery, Roland | Royal Bank of Canada |
| Gomery, Percy | Canadian Bank of Commerce |
| Goodall, A. J. | Imperial Bank of Canada |
| Gordon, J. S..... | Bank of Hamilton |
| Gordon, T. A. G..... | Molsons Bank |
| Gordon, W..... | Imperial Bank of Canada |
| Gosling, F. J..... | Bank of Hamilton |
| Gould, R. J. | Bank of Toronto |
| Gowdy, A. B. | Traders Bank of Canada |
| Gower, E. P..... | Canadian Bank of Commerce |
| Graham, Percy | People's Bank of Halifax |
| Grasett, H. J. | Canadian Bank of Commerce |
| Gray, C. A. | Royal Bank of Canada |
| Gray, Fred. H..... | Standard Bank of Canada |
| Gray, H. A. | Bank of Hamilton |
| Gray, H. M. | Bank of Montreal |
| Gray, J. E..... | Standard Bank of Canada |
| Gray, V. G. | Bank of British North America |
| Gray, W. M. | Merchants Bank of Canada |
| Gray, W. S. | Dominion Bank |

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| Greata, J. M..... | Bank of Montreal |
| Green, Albert..... | Royal Bank of Canada |
| Green, A. R. | Imperial Bank of Canada |
| Green, H. | Merchants Bank of Canada |
| Greenhill, G. V. J. | Merchants Bank of Canada |
| Greentree, Charles H. G. | Bank of Ottawa |
| Gresley, N. B. | Bank of British North America |
| Griffin, F. F. | Bank of Ottawa |
| Griffin, George H..... | Bank of Montreal. |
| Grindley, H. S. | Bank of British North America |
| Groff, H. H. | Molsons Bank |
| Grubbe, E. H. | Bank of Montreal |
| Gwyn, W. I. | Dominion Bank |
| | |
| Haberer, Eug. | Molsons Bank |
| Hagerman, A. E. | Ontario Bank |
| Hague, F. | Merchants Bank of Canada |
| Hague, Geo. | Merchants Bank of Canada |
| Hague, Geo. E..... | Merchants Bank of Canada |
| Hahn, F. X. | Merchants Bank of Canada |
| Haines, H. | Canadian Bank of Commerce |
| Haines, T. E. | Bank of Hamilton |
| Hall, H. E..... | Bank of New Brunswick |
| Hall, P. G. | Royal Bank of Canada |
| Hall, T. G. | Bank of British North America |
| Hallamore, C. W. | Canadian Bank of Commerce |
| Halls, F. E..... | People's Bank of Halifax |
| Halstead, A. G. | Merchants Bank of Canada |
| Hamel, J..... | Banque d'Hochelaga |
| Hamilton, A. L. | Canadian Bank of Commerce |
| Hamilton, H. H. | Merchants Bank of Canada |
| Hamilton, J. W..... | Bank of British North America |
| Hamilton, M. D. | Canadian Bank of Commerce |
| Harcourt, J. L. | Canadian Bank of Commerce |
| Harding, J. S..... | Molsons Bank |
| Hargraft, E. W..... | Bank of Toronto |
| Harman, G. H. | Bank of Montreal |
| Harper, C. G... .. | Merchants Bank of Canada |
| Harper, J. F. | Bank of Hamilton |
| Harries, H. A. | Molsons Bank |
| Harris, C. E..... | Royal Bank of Canada |
| Harris, C. H..... | Bank of British North America |
| Harris, F. St. C. | Union Bank of Halifax |
| Harris, R. W. D..... | Bank of British North America |
| Harrison, R. M..... | Union Bank of Canada |
| Harrison, S. L. T..... | Royal Bank of Canada |
| Harrison, T. S. | Canadian Bank of Commerce |
| Harrison, W. H. | Halifax Banking Company |
| Harshaw, W. B. | Merchants Bank of Canada |
| Hart, M. C. | Bank of Hamilton |
| Hart, W. D. | Standard Bank of Canada |
| Harvey, H. A. | Bank of British North America |
| Harvey, W. C. | Union Bank of Halifax |

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| Harwood, Chas. DeV | Quebec Bank |
| Haun, A. W. | Bank of Hamilton |
| Hawkins, G. N. C. | People's Bank of Halifax |
| Hay, E. | Imperial Bank of Canada |
| Hay, J. B. | Molsons Bank |
| Hazen, A. P. | Bank of British North America |
| Hearn, A. R. B. | Imperial Bank of Canada |
| Hebblewhite, W. A. | Imperial Bank of Canada |
| Hedley, J. M. | Canadian Bank of Commerce |
| Heffell, H. R. | Bank of British North America |
| Helm, W. J. | Bank of Toronto |
| Henderson, G. A. | Bank of Montreal |
| Henderson, Joseph | Bank of Toronto |
| Henderson, W. T. | Imperial Bank of Canada |
| Hensley, C. | Halifax Banking Company |
| Henwood, H. B. | Bank of Toronto |
| Hepburn, D. T. | Dominion Bank |
| Herman, R. A. | Royal Bank of Canada |
| Herring, B. A. | Bank of Ottawa |
| Hespeler, Jacob | Molsons Bank |
| Hettle, H. W. | Union Bank of Canada |
| Heward, E. H. | Merchants Bank of Canada |
| Hiam, J. S. | Bank of Ottawa |
| Hickey, A. E. | Molsons Bank |
| Hilborn, W. | Canadian Bank of Commerce |
| Hill, G. N. T. | Canadian Bank of Commerce |
| Hill, J. F. H. | Merchants Bank of Canada |
| Hill, J. W. | Merchants Bank of Canada |
| Hill, T. S. | Dominion Bank |
| Hillary, Norman | Traders Bank of Canada |
| Hinds, W. G. | Merchants Bank of Canada |
| Hoare, C. S. | Royal Bank of Canada |
| Hobson, J. J. | Bank of Hamilton |
| Hodder, M. S. | Merchants Bank of Canada |
| Hodgetts, G. W. | Bank of Toronto |
| Hodgetts, Thos. | Bank of Toronto |
| Hodgins, E. S. | Canadian Bank of Commerce |
| Hogg, W. jr | Canadian Bank of Commerce |
| Hogg, W. H. | Bank of Montreal |
| Holden, M. E. | Dominion Bank |
| Holland, G. A. .. | Canadian Bank of Commerce |
| Holland, H. F. | Bank of Toronto |
| Hollyer, A. J. | Bank of Montreal |
| Holt, A. E. | Bank of Montreal |
| Holt, G. S. | Canadian Bank of Commerce |
| Holt, Grange V. | Canadian Bank of Commerce |
| Holtby, F. B. | Merchants Bank of Canada |
| Hood, John | Bank of Ottawa |
| Hood, J. D. | Imperial Bank of Canada |
| Hooper, B. O. | Bank of Hamilton |
| Hope, F. | Bank of British North America |
| Hopkins, H. jr | Bank of Toronto |
| Hopkirk, F. B. | Bank of Ottawa |

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| Horne, G. H. | Canadian Bank of Commerce |
| Hornsby, O. A. | Royal Bank of Canada |
| Hoskins, R. W. | Bank of Toronto |
| Houseman, J. E. | Molsons Bank |
| Houston, W. R. | Dominion Bank |
| How, Thos. F. | Bank of Toronto |
| Howard, H. | Ontario Bank |
| Howard, M. | Royal Bank of Canada |
| Hubbell, J. L. | Canadian Bank of Commerce |
| Hughes, B. W. | Union Bank of Canada |
| Hungerford, R. F. | Merchants Bank of Canada |
| Hunter, E. P. | Quebec Bank |
| Hunter, F. J. | Bank of Montreal |
| Hurdon, N. D. | Molsons Bank |
| Hutcheson, S. M. | Western Bank of Canada |
| Hutchinson, F. W. | Canadian Bank of Commerce |
| Hutchison, H. G. | Western Bank of Canada |
| Hyde, H. E. | Union Bank of Canada |
| Hyndman, T. M. | Bank of Ottawa |
| Imrie, J. | Bank of Nova Scotia |
| Inglis, R. | Bank of British North America |
| Ireland, A. H. | Canadian Bank of Commerce |
| Irvine, J. H. | Bank of Ottawa |
| Irwin, J. | Bank of British North America |
| Jackson, A. E. P. | Canadian Bank of Commerce |
| Jackson, E. C. | Traders Bank of Canada |
| James, Victor C. | Merchants Bank of Canada |
| Jamieson, F. S. | Canadian Bank of Commerce |
| Jardine, J. Walter. | Bank of Nova Scotia |
| Jardine, W. | Merchants Bank of Canada |
| Jarvis, Arthur S. | Union Bank of Canada |
| Jarvis, Edgar R. | Canadian Bank of Commerce |
| Jarvis, E. W. | Bank of Montreal |
| Jarvis, F. S. | Merchants Bank of Canada |
| Jarvis, Gerald | Bank of Ottawa |
| Jarvis, S. J. | Bank of Montreal |
| Jemmett, F. | Merchants Bank of Canada |
| Jemmett, F. G. | Canadian Bank of Commerce |
| Jemmett, H. | Canadian Bank of Commerce |
| Jennings, J. B. | Western Bank of Canada |
| Jennings, R. C. | Canadian Bank of Commerce |
| Johns, T. W. | Bank of Yarmouth |
| Johnson, F. W. G. | Molsons Bank |
| Johnson, J. H. | Merchants Bank of Canada |
| Johnston, J. M. | Quebec Bank |
| Johnston, W. C. | Canadian Bank of Commerce |
| Jones, A. F. H. | Traders Bank of Canada |
| Jones, E. C. | Bank of Montreal |
| Jones, H. V. F. | Canadian Bank of Commerce |
| Jones, R. L. Y. | Quebec Bank |
| Jones, Stephen L. | Dominion Bank |

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| Jones, T. Roy | Bank of Nova Scotia |
| Jost, Percy M. | Royal Bank of Canada |
| Joy, W. O. | Merchants Bank of Canada |
| Jubin, H. W. | Union Bank of Halifax |
| Jukes, A. | Imperial Bank of Canada |
| Kains, A. | Canadian Bank of Commerce |
| Kains, J. M. | Imperial Bank of Canada |
| Kane, P. H. | Bank of Ottawa |
| Karn, F. E. | Molsons Bank |
| Kavanagh, C. R. | Bank of Ottawa |
| Kay, E. J. | Imperial Bank of Canada |
| Kay, John | Canadian Bank of Commerce |
| Kelly, J. | Standard Bank of Canada |
| Kelso, H. M. | Ontario Bank |
| Kemp, D. | Royal Bank of Canada |
| Kemp, J. A. C. | Canadian Bank of Commerce |
| Kemp, J. C. | Canadian Bank of Commerce |
| Kennedy, C. A. | Bank of Nova Scotia |
| Kenny, C. H. | Bank of Ottawa |
| Kenny, L. F. | Royal Bank of Canada |
| Kenrick, C. E. | Canadian Bank of Commerce |
| Kessen, Blaikie R. | Bank of Ottawa |
| Ketchum, C. V. | Bank of Toronto |
| Kilgour, W. A. | Bank of Commerce |
| Kilvert, F. E. jr. ... | Bank of Hamilton |
| Kimball, F. E. | Bank of Toronto |
| King, R. H. | Ontario Bank |
| King, R. W. H. | Eastern Townships Bank |
| King, W. C. J. | Canadian Bank of Commerce |
| Kirk, C. | Bank of British North America |
| Kirkland, Angus | Bank of Montreal |
| Kirkpatrick, G. R. F. | Imperial Bank of Canada |
| Kirkpatrick, J. R. | Molsons Bank |
| Kirkpatrick, W. P. | Canadian Bank of Commerce |
| Kirkpatrick, Wm. R. | Royal Bank of Canada |
| Kirkwood, T. | Bank of British North America |
| Knight, A. S. | Bank of Nova Scotia |
| Kohl, E. F. | Molsons Bank |
| Kortright, E. A. | Bank of Toronto |
| Kydd, Geo. | Royal Bank of Canada |
| Labadie, P. A. | Banque Nationale |
| Laberge, C. J. | Merchants Bank of Canada |
| Lacasse, J. F. | Banque d'Hochelaga |
| Lace, A. F. D. | Merchants Bank of Canada |
| Lafrance, P. G. | Banque Nationale |
| Laidlaw, J. E. | Canadian Bank of Commerce |
| Laing, G. F. | Bank of British North America |
| Laird, Alex. | Canadian Bank of Commerce |
| Laird, D. R. | Bank of Nova Scotia |
| Laird, G. G. | Canadian Bank of Commerce |
| Lamb, J. R. | Bank of Toronto |

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| Lambe, Lionel | Bank of Toronto |
| Lambert, A. | Banque Nationale |
| Lamont, Malcolm..... | Canadian Bank of Commerce |
| Lamontaigne, E. | Quebec Bank |
| Lamprey, E. W..... | Bank of Toronto |
| Langmuir, J. A..... | Imperial Bank of Canada |
| Langton, J. G. | Ontario Bank |
| Langtry, A..... | Molsons Bank |
| Larke, C..... | Standard Bank of Canada |
| Larose, Maurice | Quebec Bank |
| LaRue, J. A | Banque Nationale |
| Latimer, C. R | Bank of Toronto |
| Latornell, W. U | Molsons Bank |
| Lavoie, C. | Banque Nationale |
| Lavoie, N | Banque Nationale |
| Lawson, A. E..... | Commercial Bank of Windsor |
| Lawson, Reginald..... | Bank of Nova Scotia |
| Lawson, Walter..... | Commercial Bank of Windsor |
| Lay, Harry M | Canadian Bank of Commerce |
| Lay, J. M. | Imperial Bank of Canada |
| Leavitt, J. D | Union Bank of Halifax |
| LeDoux, A. O. | Eastern Townships Bank |
| Leduc, F. G | Banque d'Hochelaga |
| Leduc, L. Z. ... | Merchants Bank of Canada |
| Lee, Ed | Merchants Bank of Canada |
| Lefroy, A. G | Imperial Bank of Canada |
| Le Mesurier, G. G. | Imperial Bank of Canada |
| Lemieux, J. F. | Merchants Bank of Canada |
| Lemoine, S. G. | Banque Nationale |
| Leslie, A..... | Bank of British North America |
| Leslie, J. | Bank of Montreal |
| Leslie, N. G..... | Imperial Bank of Canada |
| Lewis, C. A. | Merchants Bank of Canada |
| Lewis, J. D. | Imperial Bank of Canada |
| Lewis, Norman F. | Canadian Bank of Commerce |
| Liddell, Percy, McD | Bank of Montreal |
| Lister, M. H..... | Molsons Bank |
| Little, A. F. | Union Bank of Halifax |
| Little, John R. | Merchants Bank of Canada |
| Lloyd, C. H. | Ontario Bank |
| Lockwood, H. | Bank of Montreal |
| Lockwood, H. | Molsons Bank |
| Logan, A. H..... | Bank of Ottawa |
| Logan, F. W..... | Canadian Bank of Commerce |
| Lombard, J. H..... | Bank of Nova Scotia |
| Long, F. S. | Bank of British North America |
| Lough, C. K..... | Bank of Ottawa |
| Love, C. A. | Imperial Bank of Canada |
| Low, A. | Union Bank of Canada |
| Low, H. Ryland | Molsons Bank |
| Lugsdin, W. H..... | Canadian Bank of Commerce |
| Luxton, A. G. H..... | Bank of Hamilton |
| Lyde, George | Halifax Banking Company |

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| Lyon, R. A. | Imperial Bank of Canada |
| Lytle, H. J. | Ontario Bank |
| Macbeth, F. | Molsons Bank |
| MacCallum, A. | Bank of British North America |
| MacCallum, G. M. | Royal Bank of Canada |
| MacCulloch, R. | Bank of Montreal |
| Macdonald, W. | Union Bank of Halifax |
| Macdonald, W. | Imperial Bank of Canada |
| Macdonell, A. J. | Ontario Bank |
| Macdougall, A. K. | Dominion Bank |
| MacFarlane, A. C. | Standard Bank of Canada |
| MacGachen, A. F. D. | Bank of Montreal |
| MacGachen, F. L. | Merchants Bank of Canada |
| MacGillivray, D. | Canadian Bank of Commerce |
| MacGowan, W. J. | Merchants Bank of Canada |
| Machaffie, L. G. | Bank of British North America |
| Machaffie, W. A. | Merchants Bank of Canada |
| MacIntyre, G. | Dominion Bank |
| MacKenzie, A. H. B. | Canadian Bank of Commerce |
| MacKenzie, C. E. | Royal Bank of Canada |
| Mackenzie, G. H. | Royal Bank of Canada |
| MacKenzie, G. P. | Bank of British North America |
| Mackenzie, H. B. | Bank of British North America |
| MacKenzie, J. M. | Imperial Bank of Canada |
| Mackenzie, N. S. | Merchants Bank of Canada |
| Mackinnon, Jas. | Eastern Townships Bank |
| Mackintosh, A. St. L. | Merchants Bank of Canada |
| Mackintosh, C. D. | Canadian Bank of Commerce |
| Macklem, Herbert | Imperial Bank of Canada |
| McLeod, R. R. | Bank of Hamilton |
| MacMahon, H. P. | Traders Bank of Canada |
| MacNamara, D. | Bank of Ottawa |
| Macneill, W. C. | Bank of Nova Scotia |
| Macnider, A. | Bank of Montreal |
| Macpherson, A. | Merchants Bank of Canada |
| Macpherson, R. C. | Canadian Bank of Commerce |
| McBrine, J. H. | Bank of Toronto |
| McCaw, A. S. | Eastern Townships Bank |
| McCleneghan, A. B. | Imperial Bank of Canada |
| McClintock, E. S. V. | Bank of Montreal |
| McCormick, R. | Royal Bank of Canada |
| McCosh, R. G. | Canadian Bank of Commerce |
| McCurdy, D. A. | Halifax Banking Company |
| McCurdy, E. A. | Royal Bank of Canada |
| McCurdy, F. B. | Halifax Banking Company |
| McDonald, Arthur | Bank of New Brunswick |
| McDougall, Allan. | Quebec Bank |
| McDougall, F. | Royal Bank of Canada |
| McDougall, H. H. | Royal Bank of Canada |
| McDougall, Thomas | Quebec Bank |
| McEachern, T. W. | Bank of Toronto |
| McGill, C. | Ontario Bank |
| McGill, V. C. | Ontario Bank |

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| McGregor D. | Canadian Bank of Commerce |
| McGuire, W. | Imperial Bank of Canada |
| McHarrie, R. C. | Canadian Bank of Commerce |
| McInnes, D. | Banque d'Hochelaga |
| McIntosh, J. M. | Dominion Bank |
| McIreith, W. W. | Royal Bank of Canada |
| McIsaac, John A. | Royal Bank of Canada |
| McKay, A. B. | Bank of Hamilton |
| McKay, G. B. | Bank of Toronto |
| McKay, N. R. | Imperial Bank of Canada |
| McKee, G. W. | Canadian Bank of Commerce |
| McKeen, John | Bank of Nova Scotia |
| McKie, W. R. | Merchants Bank of P. E. I. |
| McLaggan, C. E. | Union Bank of Halifax |
| McLaren, H. D. ... | Bank of Hamilton |
| McLean, A. D. | Merchants Bank of Canada |
| McLean, J. H. | Merchants Bank of Canada |
| McLean, M. St C. | Canadian Bank of Commerce |
| McLennan, D. | Canadian Bank of Commerce |
| McLeod, J. A. | Bank of Nova Scotia |
| McMain, F. E. P. | Royal Bank of Canada |
| McMichael, H. M. | Bank of British North America |
| McMillan, J. F. | Merchants Bank of P. E. I. |
| McMullen, E. W. | Merchants Bank of Canada |
| McMurray, L. S. | Bank of Toronto |
| MacPherson, A. | Merchants Bank of Canada |
| McQuaid, J. H. | Merchants Bank of P. E. I. |
| McQuarrie, A. J. | Bank of British North America |
| McRae, A. D. | Union Bank of Halifax |
| Macoun, F. J. | Canadian Bank of Commerce |
| Magee, J. E. | Merchants Bank of Canada |
| Magee, T. W. | Halifax Banking Company |
| Mair, Geo. | Traders Bank of Canada |
| Mallory, H. A. | Traders Bank of Canada |
| Malpas, F. C. | Canadian Bank of Commerce |
| Manchester, J. | Bank of New Brunswick |
| Mann, F. A. | Merchants Bank of Canada |
| Manson, Wm. | Canadian Bank of Commerce |
| Marchand, A. | Molsons Bank |
| Margetts, P. | Bank of British North America |
| Marler, W. L. | Merchants Bank of Canada |
| Marsh, F. H. | Imperial Bank of Canada |
| Martin, A. R. | Imperial Bank of Canada |
| Martin, James ... | Bank of Ottawa |
| Massey, F. V. | Bank of Ottawa |
| Massey, George | Bank of Montreal |
| Mathewson, F. H. | Canadian Bank of Commerce |
| Mathewson, H. G. | Canadian Bank of Commerce |
| Mathewson, W. H. | Canadian Bank of Commerce |
| Matthew, R. T. | Bank of Montreal |
| Maynard, Wm. | Canadian Bank of Commerce |
| Meldrum, W. A. | Merchants Bank of Canada |
| Mellish, A. E. | Royal Bank of Canada |

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| Mercer, C. A | Canadian Bank of Commerce |
| Merrett, T. E..... | Merchants Bank of Canada |
| Metzler, R. H. | Halifax Banking Company |
| Meynell, W. B | Royal Bank of Canada |
| Mickleborough, W. B..... | Bank of Toronto |
| Middleton, W. E | Ontario Bank |
| Miller, D | Merchants Bank of Canada |
| Miller, G. A | Merchants Bank of Canada |
| Millidge, J. J..... | Union Bank of Canada |
| Minty, F. C. G | Canadian Bank of Commerce |
| Minty, H. I | Canadian Bank of Commerce |
| Mitchell, J. H | Bank of Ottawa |
| Mitchell, W. F | Royal Bank of Canada |
| Mobray, E. R | Royal Bank of Canada |
| Mockridge, Jas..... | Bank of Toronto |
| Moffat, A. C | Canadian Bank of Commerce |
| Moffat, W | Imperial Bank of Canada |
| Moisan, A | Banque Nationale |
| Moles, G. H | Bank of Ottawa |
| Molson, A. E..... | Union Bank of Canada |
| Molson, J. D | Molsons Bank |
| Monk, John Benning | Bank of Ottawa |
| Montgomery, R. J..... | Canadian Bank of Commerce |
| Montgomery, W. H..... | Bank of Ottawa |
| Montgomery, W. J. | Ontario Bank |
| Montizambert, A. | Bank of Montreal |
| Moodbury, F. H | People's Bank of Halifax |
| Moody, F. W | Bank of Nova Scotia |
| Mooney, Andrew | Bank of Nova Scotia |
| Moore, E. A | Bank of Montreal |
| Moorman, J. | Halifax Banking Company |
| Morden, H. J. | Standard Bank of Canada |
| More, John C..... | Merchants Bank of Canada |
| Moreau, W. A. | Banque de St. Hyacinthe |
| Moreault, J. F | Molsons Bank |
| Morehouse, W. E..... | Eastern Townships Bank |
| Morey, S. F. | Eastern Townships Bank |
| Morgan, C. G. | Merchants Bank of Canada |
| Morgan, H. H | Imperial Bank of Canada |
| Morris, H. H..... | Canadian Bank of Commerce |
| Morris, J. | Ontario Bank |
| Morris, M | Imperial Bank of Canada |
| Morris, Massey..... | Canadian Bank of Commerce |
| Morrison, Duncan C. ... | Molsons Bank |
| Morrison, J. H | Halifax Banking Company |
| Morrison, J. J. | Bank of British North America |
| Morrison, R. P | Halifax Banking Company |
| Morson, W. C. T | Canadian Bank of Commerce |
| Morton, C. E. H | Merchants Bank of Canada |
| Morton, H. H. | Canadian Bank of Commerce |
| Morton, N. W | Bank of New Brunswick |
| Morton, W. D | Bank of Toronto |
| Mosher, H. E. | Commercial Bank of Windsor |
| Motherwell, J. A | Canadian Bank of Commerce |

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| Mowat, John..... | Bank of Nova Scotia |
| Moyle, J. R. | Bank of British North America |
| Muckleston, A. J | Bank of Ottawa |
| Mullen, James G | Canadian Bank of Commerce |
| Mundie, R. W | Merchants Bank of Canada |
| Munro, A. D..... | Bank of Nova Scotia |
| Munro, Geo. | Merchants Bank of Canada |
| Munro, Geo. W..... | People's Bank of Halifax |
| Munro, J. S. | Canadian Bank of Commerce |
| Munro, K. V..... | Canadian Bank of Commerce |
| Murison, W. J. H | Imperial Bank of Canada |
| Murray, A. H | Imperial Bank of Canada |
| Murray, F. L..... | Royal Bank of Canada |
| Murray, Hugh, Jr. | Bank of Hamilton |
| Murray, J. F..... | Canadian Bank of Commerce |
| Murray, J. McE. | Canadian Bank of Commerce |
| Murray, J. W. | Commercial Bank of Windsor |
| Murray, William | Canadian Bank of Commerce |
| Mussen, R. T. | Canadian Bank of Commerce |
| Naftel, F. J. | Bank of Montreal |
| Napier, R..... | Bank of Montreal |
| Nash, A. E. | Bank of Montreal |
| Nasmith, H. C..... | Canadian Bank of Commerce |
| Nasmith, S. J. ... | Imperial Bank of Canada |
| Naylor, W. S. | Molsons Bank |
| Neeve, J. H. | Bank of Ottawa |
| Neill, C. E..... | Royal Bank of Canada |
| Nesbitt, H. W. | Merchants Bank of Canada |
| Netherby, A. B..... | Royal Bank of Canada |
| Neville, C. D. | Bank of British North America |
| Niblett, E. R..... | Bank of Hamilton |
| Nicoll, J. C. | Bank of British North America |
| Niles, C. H. | Eastern Townships Bank |
| Noble, C. J. | Canadian Bank of Commerce |
| Noble, F. D. | Merchants Bank of Canada |
| Norsworthy, S. C..... | Bank of Montreal |
| Nowers, W. H | Merchants Bank of Canada |
| Nunns, A. L..... | Imperial Bank of Canada |
| O'Grady, G. de C..... | Canadian Bank of Commerce |
| O'Grady, J. W. de C. | Bank of Montreal |
| O'Halloran, J. M | Eastern Townships Bank |
| Oliver, D. B | Union Bank of Canada |
| Oliver, F. G. | Merchants Bank of Canada |
| Oliver, W. T..... | Bank of British North America |
| Olivier, E. P..... | Eastern Townships Bank |
| Ord, A. B. | Traders Bank of Canada |
| O'Reilly, H. H | Bank of Hamilton |
| O'Reilly, H. R..... | Canadian Bank of Commerce |
| Osborne, A. C | Ontario Bank |
| Osborne, W. P | Bank of Ottawa |
| Osler, D. F. | Imperial Bank of Canada |
| Owen, L. C. | Bank of Ottawa |

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| Paddon, J. A..... | Bank of Montreal |
| Pangman, H. G..... | Canadian Bank of Commerce |
| Pangman, J. E. L..... | Canadian Bank of Commerce |
| Paquin, S. Z..... | Merchants Bank of Canada |
| Pardee, E. C..... | Bank of Montreal |
| Parker, A. D..... | Canadian Bank of Commerce |
| Parker, A. G..... | Bank of Montreal |
| Parker, E. G..... | Bank of Ottawa |
| Parker, E. Ross..... | Bank of Nova Scotia |
| Parker, F. A..... | Merchants Bank of Canada |
| Parker, W. D..... | Ontario Bank |
| Parkes, C. M..... | Bank of Toronto |
| Parkes, G. E..... | Canadian Bank of Commerce |
| Parkes, T. G. A..... | Royal Bank of Canada |
| Parsons, H. B..... | Canadian Bank of Commerce |
| Pashby, R..... | Bank of Toronto |
| Pashley, F. W..... | Molsons Bank |
| Paterson, N..... | Imperial Bank of Canada |
| Paterson, R. W..... | Bank of Ottawa |
| Patterson, A. B..... | Merchants Bank of Canada |
| Patterson, C. A..... | Bank of Hamilton |
| Patterson, E. L. Stewart..... | Eastern Townships Bank |
| Patterson, G. H..... | Bank of Ottawa |
| Patterson, G. M..... | Canadian Bank of Commerce |
| Patton, F. L..... | Dominion Bank |
| Patton, R. C..... | Quebec Bank |
| Péace, W. A..... | Dominion Bank |
| Peacock, C. S..... | Union Bank of Canada |
| Pearce, W. K..... | Dominion Bank |
| Pearson, C. W. R..... | Union Bank of Canada |
| Pease, Edson L..... | Royal Bank of Canada |
| Peden, G. R..... | Bank of Ottawa |
| Pegram, W. H..... | Canadian Bank of Commerce |
| Pemberton, G. C. T..... | Canadian Bank of Commerce |
| Pennington, Wm. J. G..... | Bank of British North America |
| Pennock, C. G..... | Bank of Ottawa |
| Pennock, H. P..... | Bank of Ottawa |
| Pepler, A..... | Dominion Bank |
| Pepler, C. E..... | Dominion Bank |
| Percival, W. F..... | Bank of Toronto |
| Peterson, F. J..... | Imperial Bank of Canada |
| Pethick, H. S..... | Bank of Nova Scotia |
| Phepoe, T. B..... | Molsons Bank |
| Philip, W..... | Imperial Bank of Canada |
| Phillips, E. S..... | Merchants Bank of Canada |
| Phillipotts, W. E..... | Bank of British North America |
| Phipps, A. E..... | Imperial Bank of Canada |
| Phipps, A. R..... | Canadian Bank of Commerce |
| Pinkham, J..... | Imperial Bank of Canada |
| Pitt, Edward..... | Bank of Montreal |
| Playter, E. M..... | Canadian Bank of Commerce |
| Plummer, A. H..... | Canadian Bank of Commerce |
| Plummer, J. H..... | Canadian Bank of Commerce |

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| Polson, Hugh | Canadian Bank of Commerce |
| Pool, John | Traders Bank of Canada |
| Pope, Frank H..... | Ontario Bank |
| Porter, H. A..... | Royal Bank of Canada |
| Porter, Jas. S..... | Bank of Toronto |
| Pottenger, F. W. | Bank of Hamilton |
| Powell, Carlos S..... | Quebec Bank |
| Powell, W. B..... | Imperial Bank of Canada |
| Power, E. V..... | Bank of Ottawa |
| Pratt, Edward C. | Molsons Bank |
| Pratt, W..... | Bank of Toronto |
| Pratt, W. H | Molsons Bank |
| Prendergast, M. J. A | Banque d'Hochelaga |
| Pringle, A. D. | Merchants Bank of Canada |
| Pringle, John..... | Bank of Toronto |
| Pringle, W..... | Merchants Bank of Canada |
| Proctor, J. R..... | Union Bank of Canada |
| Pugh, Henry J | Union Bank of Canada |
| Putnam, Arthur G | Royal Bank of Canada |
| Racey, E. F | Bank of British North America |
| Radcliffe, D. A..... | Ontario Bank |
| Rae, H. C | Canadian Bank of Commerce |
| Ramsay, A. Gordon..... | Bank of British North America |
| Ramsden, F. G..... | Bank of Toronto |
| Rapsey, W. J..... | Ontario Bank |
| Ratz, D. D..... | Traders Bank of Canada |
| Raymond, S. D..... | Imperial Bank of Canada |
| Rea, D. C | Royal Bank of Canada |
| Read, Chas. N | Merchants Bank of Canada |
| Read, H. L. | Merchants Bank of Canada |
| Reade, C. W..... | Imperial Bank of Canada |
| Reeve, R. F..... | Bank of Montreal |
| Reid, E. R..... | Commercial Bank of Windsor |
| Reid, Geo. P..... | Standard Bank of Canada |
| Reikie, K. W..... | Canadian Bank of Commerce |
| Rhodes, W. C | Molsons Bank |
| Rice, O. F | Imperial Bank of Canada |
| Richardson, J. A ... | Imperial Bank of Canada |
| Richardson, M. A..... | Imperial Bank of Canada |
| Richardson, S. A | Bank of Montreal |
| Richardson, W. G | Bank of Montreal |
| Richey, M. S. L. ... | Bank of Montreal |
| Ridout, A. H..... | Bank of Hamilton |
| Ridout, A. W..... | Canadian Bank of Commerce |
| Ridout, H. E..... | Imperial Bank of Canada |
| Rintoul, R | Bank of Montreal |
| Robarts, A. W..... | Canadian Bank of Commerce |
| Roberts, E. C. | Imperial Bank of Canada |
| Roberts, J. P..... | Bank of British North America |
| Robertson, A..... | Bank of Nova Scotia |
| Robertson, Blair | Bank of Nova Scotia |
| Robertson, David..... | Bank of Ottawa |

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|---------------------------|-------------------------------|
| Robertson, F. O. | Union Bank of Halifax |
| Robertson, W. J. | Canadian Bank of Commerce |
| Robinson, C. A. | Bank of British North America |
| Robinson, Edward N. | Eastern Townships Bank |
| Robinson, F. M. | Bank of Hamilton |
| Robinson, H. B. | Bank of Montreal |
| Robinson, P. C. | Bank of Nova Scotia |
| Robinson, R. A. | Bank of British North America |
| Robinson, Wm. H. | Eastern Townships Bank |
| Robitaille, G. S. F. | Quebec Bank |
| Roger, N. R. | Dominion Bank |
| Ross, C. A. | Dominion Bank |
| Ross, C. G. | Ontario Bank |
| Ross, F. J. | Merchants Bank of Canada |
| Ross, Norman | Traders Bank of Canada |
| Ross, R. | Dominion Bank |
| Rothwell, H. L. | Canadian Bank of Commerce |
| Rowley, A. H. | Bank of Nova Scotia |
| Rowley, C. W. | Canadian Bank of Commerce |
| Rowley, H. H. | Bank of British North America |
| Rowley, O. R. | Bank of British North America |
| Roy, E. G. | Imperial Bank of Canada |
| Rudderham, H. E. | People's Bank of Halifax |
| Ruggles, J. W. | Bank of Nova Scotia |
| Rumsey, R. A. | Canadian Bank of Commerce |
| Rumsey, C. S. | Traders Bank of Canada |
| Russell, J. A. | Halifax Banking Company |
| Russell, W. | Bank of Hamilton |
| Russell, W. C. | Canadian Bank of Commerce |
| Rutland, H. G. | Bank of Hamilton |
| Ryan, J. W. | Union Bank of Halifax |
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| St. Jean, E. G. | Merchants Bank of Canada |
| Sampson, A. R. | Dominion Bank |
| Sanson, D. M. | Canadian Bank of Commerce |
| Saunders, A. L. | Bank of Ottawa |
| Saunders, E. M. | Canadian Bank of Commerce |
| Savage, W. J. | Canadian Bank of Commerce |
| Scarff, H. | Imperial Bank of Canada |
| Scarth, C. G. | Bank of Montreal |
| Scarth, J. F. | Imperial Bank of Canada |
| Schell, H. P. | Canadian Bank of Commerce |
| Scholfield, G. P. | Standard Bank of Canada |
| Scott, A. | Canadian Bank of Commerce |
| Scott, W. H. | Quebec Bank |
| Secord, H. C. | Imperial Bank of Canada |
| Secord, H. C. | Canadian Bank of Commerce |
| Sewell, H. F. D. | Canadian Bank of Commerce |
| Shadbolt, E. M. | Bank of Montreal |
| Shannon, E. G. | Halifax Banking Company |
| Shannon, F. S. | Bank of Ottawa |
| Shannon, W. T. | Standard Bank of Canada |
| Sharpe, E. M. | Merchants Bank of Canada |

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| Sharpe, O. H..... | Bank of British North America |
| Sharpe, O. R..... | Bank of Montreal |
| Sharpe, T. B..... | Bank of Ottawa |
| Shaw, G. H. | Quebec Bank |
| Shaw, H. B. | Union Bank of Canada |
| Shaw, Robert..... | Merchants Bank of Canada |
| Sheffield, G. | Bank of Montreal |
| Sherman, F. J..... | Royal Bank of Canada |
| Short, F. T..... | Bank of British North America |
| Short, H. A. | Eastern Townships Bank |
| Shreve, F. J..... | Merchants Bank of Canada |
| Sibbald, H..... | Bank of Montreal |
| Siegel, J..... | Union Bank of Canada |
| Simpson, A. | Ontario Bank |
| Simpson, D. | Bank of British North America |
| Sinter, Thos. S..... | Bank of British North America |
| Skead, G..... | Bank of Ottawa |
| Skeaff, Jno. Stewart..... | Bank of Toronto |
| Skelton, Arthur C..... | Bank of British North America |
| Skey, A. H..... | Bank of Hamilton |
| Skey, Harvey F..... | Bank of British North America |
| Skey, Wm Russel | Molsons Bank |
| Slack, N. H. | Eastern Townships Bank |
| Sloane, B. O'R..... | Quebec Bank |
| Sloane, S. F..... | Dominion Bank |
| Smart, R. H. | Traders Bank of Canada |
| Smart, S. R. | Molsons Bank |
| Smith, A. M. | Merchants Bank of Canada |
| Smith, A. M. | Royal Bank of Canada |
| Smith, A. V. | Union Bank of Halifax |
| Smith, Chas. C..... | Quebec Bank |
| Smith, Edward F..... | Royal Bank of Canada |
| Smith, Fred W..... | Union Bank of Canada |
| Smith, G. Vernon..... | Bank of Ottawa |
| Smith, Geo. W..... | Canadian Bank of Commerce |
| Smith, H. H. | Molsons Bank |
| Smith, J. A..... | Canadian Bank of Commerce |
| Smith, R. E. | Royal Bank of Canada |
| Smith, W. | Merchants Bank of Canada |
| Smith, W. | Royal Bank of Canada |
| Smith, Wm. H. | Ontario Bank |
| Smith, W. Thomson | Traders Bank of Canada |
| Snyder, L. P..... | Sovereign Bank of Canada |
| Somerville, P. H. M..... | Eastern Townships Bank |
| Spencer, A. V. | Merchants Bank of Canada |
| Spencer, W. A. | Royal Bank of Canada |
| Spier, Wm..... | Eastern Townships Bank |
| Spink, G. A. | Royal Bank of Canada |
| Spragge, G. E. | Imperial Bank of Canada |
| Sproat, Jno..... | Bank of Hamilton |
| Spry, F. M..... | Bank of British North America |
| Stavert, E. P..... | Summerside Bank |
| Stavert, W. E. | Bank of New Brunswick |

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|---------------------------|-------------------------------|
| Steckle, A | Western Bank of Canada |
| Steeves, A. A..... | Royal Bank of Canada |
| Stephens, W. S..... | Molsons Bank |
| Sterns, G. W..... | Halifax Banking Company |
| Sterns, S. S. | Bank of Nova Scotia |
| Steven, H. S | Bank of Hamilton |
| Stevens, G..... | Eastern Townships Bank |
| Stevens, J. A..... | Royal Bank of Canada |
| Stevenson, B. B .. | Quebec Bank |
| Stevenson, H. H .. | Molsons Bank |
| Stevenson, M. S .. | Molsons Bank |
| Stewart, C. J..... | Merchants Bank of P. E. I. |
| Stewart, D. M..... | Sovereign Bank of Canada |
| Stewart, G. F..... | Ontario Bank |
| Stewart, H. Malcolm .. | Canadian Bank of Commerce |
| Stewart, J. A..... | Standard Bank of Canada |
| Stewart, J. D..... | Bank of Ottawa |
| Stewart, J. P. L..... | Union Bank of Halifax |
| Stewart, W. J | Standard Bank of Canada |
| Stidston, J. H | Imperial Bank of Canada |
| Stikeman, H | Bank of British North America |
| Stone, W. N | Eastern Townships Bank |
| Stork, C. M | Canadian Bank of Commerce |
| Strathy, E. K..... | Union Bank of Canada |
| Strathy, Frank W..... | Union Bank of Canada |
| Strathy, H. S..... | Traders Bank of Canada |
| Strathy, Stuart | Traders Bank of Canada |
| Strickland, C. N. S ... | Union Bank of Halifax |
| Strickland, P. D. E | Quebec Bank |
| Strong, F. T | Imperial Bank of Canada |
| Stuart, John H | Bank of Hamilton |
| Sutherland, A. H..... | Union Bank of Canada |
| Sweeny, C | Bank of Montreal |
| Swinford, A. S | Bank of Ottawa |
| Sylvestre, C. A | Banque d'Hochelaga |
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| Taillon, A. A..... | Banque Nationale |
| Tait, A. Gordon | Royal Bank of Canada |
| Tait, T. J | Union Bank of Canada |
| Tapper, W. H | Bank of Nova Scotia |
| Tate, L. E | Molsons Bank |
| Taylor, A. P | Molsons Bank |
| Taylor, F. G | Merchants Bank of Halifax |
| Taylor, Frank W | Royal Bank of Canada |
| Taylor, F. W..... | Bank of Montreal |
| Taylor, Geo. A | Royal Bank of Canada |
| Taylor, J. | Bank of British North America |
| Taylor, James G | Halifax Banking Company |
| Taylor, P. B | Bank of Ottawa |
| Taylor, R. F | Merchants Bank of Canada |
| Theoret, J. H..... | Banque d'Hochelaga |
| Thomas, C. E..... | Dominion Bank |
| Thomas, J. E..... | Canadian Bank of Commerce |

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|------------------------|-------------------------------|
| Thomas, Wm. S. | Bank of New Brunswick |
| Thompson, G. M. | Eastern Townships Bank |
| Thompson, J. E. | Eastern Townships Bank |
| Thompson, R. A. | Bank of Montreal |
| Thomson, G. A. | Halifax Banking Company |
| Thomson, H. A. H. | Molsons Bank |
| Thomson, R. G. | Imperial Bank of Canada |
| Thomson, W. H. | Imperial Bank of Canada |
| Thornton, A. S. | Canadian Bank of Commerce |
| Thornton, C. H. | Sovereign Bank of Canada |
| Tod, J. | Bank of British North America |
| Todd, H. E. ... | Merchants Bank of Canada |
| Tofield, H. A. | Merchants Bank of Canada |
| Tofield, F. W. | Quebec Bank |
| Torrance, W. B. | Royal Bank of Canada |
| Torey, L. E. | Royal Bank of Canada |
| Towers, A. S. | Bank of Toronto |
| Townshend, A. S. | Halifax Banking Company |
| Travers, R. G. H. | Bank of Montreal |
| Travers, W. R. | Merchants Bank of Canada |
| Trenholme, H. W. | Canadian Bank of Commerce |
| Trepanier, J. | Banque d'Hochelaga |
| Trigge, A. St. L. | Canadian Bank of Commerce |
| Tupper, W. E. | Union Bank of Halifax |
| Turgeon, J. E. | Banque d'Hochelaga |
| Turnbull, E. M. | Commercial Bank of Windsor |
| Turnbull, J. | Bank of Hamilton |
| Turnbull, T. M. | Canadian Bank of Commerce |
| Tytler, P. Boyd. | Merchants Bank of Canada |
| Upham, G. M. | Halifax Banking Company |
| Vallee, P. | Banque Nationale |
| Van Felson, A. B. | People's Bank of Halifax |
| Veasey, G. | Union Bank of Canada |
| Verchere, A. G. | Canadian Bank of Commerce |
| Vessey, A. E. | Bank of Nova Scotia |
| Vibert, Philip. | Union Bank of Canada |
| Viets, G. R. | Bank of Nova Scotia |
| Von Cramer, D. | Royal Bank of Canada |
| Waddell, J. B. | Union Bank of Canada |
| Wadsworth, W. R. | Bank of Toronto |
| Wainwright, C. E. | Union Bank of Halifax |
| Wainwright, G. C. | Bank of Ottawa |
| Wainwright, J. C. | Bank of Montreal |
| Wainwright, J. R. | Molsons Bank |
| Walker, B. E. | Canadian Bank of Commerce |
| Walker, C. | Dominion Bank |
| Walker, F. T. | Royal Bank of Canada |
| Walker, J. | Imperial Bank of Canada |
| Walker, J. | Quebec Bank |
| Walker, W. | Dominion Bank |
| Wallace, H. N. | Halifax Banking Company |

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| Wallace, Jas. B..... | Merchants Bank of Canada |
| Wallace, R. G | Bank of Nova Scotia |
| Wallace, R. R | Bank of Montreal |
| Wallace, Wm..... | Molsons Bank |
| Walsh, Ed | Royal Bank of Canada |
| Walsh, J. W. B..... | Dominion Bank |
| Wanzer, H. P | Bank of Hamilton |
| Ward, A. E | Quebec Bank |
| Ward, A. H | Traders Bank of Canada. |
| Ward, E. E | Molsons Bank |
| Warden, W. McC..... | Sovereign Bank of Canada |
| Waters, D | Bank of Nova Scotia |
| Watson, C. E | Union Bank of Canada |
| Watson, H. M | Bank of Hamilton |
| Watson, Jas | Traders Bank of Canada |
| Watson, J. B..... | Imperial Bank of Canada |
| Watson, J. W. G | Bank of Montreal |
| Watson, W. W..... | Bank of Nova Scotia |
| Waud, B. H | Molsons Bank |
| Waud, E. W..... | Molsons Bank |
| Webb, E. E | Union Bank of Canada |
| Webster, H. C | Bank of Montreal |
| Webster, L. J | People's Bank of Halifax |
| Wedd, G. M | Canadian Bank of Commerce |
| Wedd, John C | Dominion Bank |
| Wedd, L. E | Bank of Hamilton |
| Weir, W. A | Imperial Bank of Canada |
| West, F. W | Canadian Bank of Commerce |
| Wetherell, J. Elgin | Canadian Bank of Commerce |
| Wethey, C. H | Imperial Bank of Canada |
| Wethey, H. L | Canadian Bank of Commerce |
| White, A. W..... | Canadian Bank of Commerce |
| White, Chas | Imperial Bank of Canada |
| White, G. A | People's Bank of Halifax |
| White, H. R..... | People's Bank of Halifax |
| White, W. N..... | Bank of Ottawa |
| Whitely, A. L | Imperial Bank of Canada |
| Wickens, W. G..... | Imperial Bank of Canada |
| Wickson, Arthur | Merchants Bank of Canada |
| Wilkie, D. R..... | Imperial Bank of Canada |
| Wilkinson, R. G | Imperial Bank of Canada |
| Williams, A. E | Bank of Nova Scotia |
| Williams, E. L | Standard Bank of Canada |
| Williams, Geo | Canadian Bank of Commerce |
| Williams, H. F..... | Eastern Townships Bank |
| Williams, R. A..... | Canadian Bank of Commerce |
| Williams, R. S | Canadian Bank of Commerce |
| Williamson, George..... | Molsons Bank |
| Willis, J. M | Ontario Bank |
| Willmott, J. S | Merchants Bank of Canada |
| Wilmot, K. Eardley..... | Bank of Montreal |
| Wilson, A. E..... | Bank of Montreal |
| Wilson, Geo | Imperial Bank of Canada |

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| Wilson, G. H..... | Bank of Montreal |
| Wilson, H. B | Molsons Bank |
| Wilson, H. P..... | Royal Bank of Canada |
| Wilson, J. H | Imperial Bank of Canada |
| Wilson, M. W | Royal Bank of Canada |
| Winans, B. G..... | Royal Bank of Canada |
| Winlow, F. J..... | Traders Bank of Canada |
| Winslow, E. P | Bank of Montreal |
| Winter, G. H..... | Bank of British North America |
| Wonham, H. E. C. | Bank of Montreal |
| Woods, F. G..... | Bank of Montreal |
| Woollcombe, F..... | Union Bank of Canada |
| Wrenshall, C. M..... | Merchants Bank of Canada |
| Wright, F. C..... | Canadian Bank of Commerce |
| Wright, J. E..... | Bank of Montreal |
| Wright, Percy | Bank of Toronto |
| Wright, Wm. L..... | Union Bank of Halifax |
| Würtele, Carl F | Quebec Bank |
| Wurtele, H..... | Merchants Bank of Canada |
| Wyld, Ernest A | Canadian Bank of Commerce |
| | |
| Yeats, T. E | Ontario Bank |
| Young, C. A | People's Bank of Halifax |
| Young, F. W..... | Union Bank of Canada |
| Young, W. C..... | Merchants Bank of Canada |
| Yule, E. B | Ontario Bank |

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